रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003–05

भारत का राजपत्र
The Gazette of India

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WEEKLY

सं. 6] नई दिल्ली, फरवरी 3—फरवरी 9, 2013, शनिवार/माघ 14—माघ 20, 1934
No. 6] NEW DELHI, FEBRUARY 3—FEBRUARY 9, 2013, SATURDAY/MAGHA 14—MAGHA 20, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 30 जनवरी, 2013

का. आ. 288.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना द्वारा संस्थापित मामलों का परीक्षण या अपीलीय न्यायालयों में इन मामलों से उत्पन्न अन्य मामलों, जिस पर उपर्युक्त धारा के प्रावधान लागू होते हैं, उनका संचालन करने के लिए निम्नोक्त अभियोजन अधिकारियों को केंद्रीय अन्वेषण ब्यूरो के विशेष लोक अभियोजक के रूप में नियुक्त करती है :

सर्वश्री

1. लिमोशिन ए.
2. जितेन्द्र कुमार
3. मो. मुकीम
4. प्रदीप कुमार श्रीवास्तव
5. सुदेवकुमार आर.
6. कुंदन लाल
7. हर्ष मोहन सिंह
8. नवीन कुमार
9. अशोक कुमार गौतम
10. नईम राजा
11. एस. के. यादव
12. नीरज भारद्वाज
13. सुनील वर्मा
14. दिनेश कुमार शर्मा
15. श्रीमती गीताश्री रानी टोपो
16. गायकवाड़ प्रशान्त कुमार बलीराम
17. एन. नागेन्द्रन
18. संजय कुमार
19. राजीव नंदन सिंह
20. एम. एस. जयेस

[फा. सं. 225/35/2012-एवीडी II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 30th January, 2013

S.O. 288.— In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Prosecuting Offiter of the Central Bureau of Investigation as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment (C.B.I) in trials courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law in any State or Union Territory to which the provisions of the aforesaid section apply :—

S/Shri

1. Limosin A.
2. Jitender Kumar
3. Md. Muqeem
4. Pradeep Kumar Srivastava
5. Sudevkumar R.
6. Kundan Lal
7. Harsh Mohan Singh
8. Naveen Kumar
9. Ashok Kumar Gautam
10. Naeem Raja
11. S.K. Yadav
12. Neeraj Bhardwaj
13. Sunil Verma
14. Dinesh Kumar Sharma
15. Smt. Geetashree Rani Toppo
16. Gaikwad Prashantkumar Baliram
17. N. Nagendran
18. Sanjay Kumar
19. Rajeev Nandan Singh
20. M.S. Jayesh

[F. No. 225/35/2012-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2013

का. आ. 289.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 25 की उप-धारा (1-ए) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना द्वारा संस्थापित मामलों का भारत के किसी भी संघ शासित क्षेत्र या राज्य में सक्षम क्षेत्राधिकार के न्यायालय में जिस पर उपर्युक्त धारा के प्रावधान लागू होते हैं, का संचालन करने के लिए निम्नोक्त अभियोजन अधिकारियों को केंद्रीय अन्वेषण ब्यूरो के सहायक लोक अभियोजक के रूप में नियुक्त करती है :—

सर्वश्री

1. ज्योति रानी सोलंकी
2. राकेश कुमार यादव
3. अंजलि सुरेशराव अंबेकर
4. मृदुल जैन
5. सागर शंकर
6. पंकज कुमार गुप्ता
7. अशोक कुमार
8. नवीन कुमार गिरि
9. शांति भूषण
10. सुशील कुमार
11. शशि कांत
12. राम स्वरूप
13. सुश्री शशि तिवारी

[फा. सं. 225/35/2012-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2013

S. O. 289 .—In exercise of the powers conferred by sub-section (1-A) of Section 25 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), tne Central Government hereby appoints following Prosecuting Officers of the Central Bureau of Investigation as Assistant Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment (C.B.I) in the courts of competent jurisdiction in any State or Union Territory of India to which the provision of the aforesaid section apply :—

S/Shri

1. Jyoti Rani Solanki
2. Rakesh Kumar Yadav
3. Anjali Sureshrao Ambekar
4. Mridul Jain
5. Sagar Shankar
6. Pankaj Kumar Gupta
7. Ashok Kumar
8. Navin Kumar Giri
9. Shanti Bhushan
10. Sushil Kumar
11. Shashikant
12. Ram Swaroop
13. Ms. Shashi Tiwari

[F. No. 225/35/2012-AVD-II]
RAJIV JAIN, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का. आ. 290.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तराखंड राज्य सरकार, गृह अनुभाग-1, देहरादून की दिनांक 12 अक्तूबर, 2012 की अधिसूचना सं 3124/XX/(1)-2012-9 (14) 2012 द्वारा प्राप्त सहमति से पुलिस स्टेशन-कनखल, हरिद्वार में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 365 के अंतर्गत दर्ज प्राथमिकी सं. 234/2012 जो कि स्वामी शंकर देव, संस्थापक, दिव्य योग मंदिर ट्रस्ट, हरिद्वार, उत्तराखंड के गायब हो जाने के संबंध में अन्वेषण करने तथा प्रयासों, दुष्प्रेरणों और षडयंत्र तथा इसी संव्यवहार में किए गए कोई अन्य अपराध या अपराधों या उपर्युक्त उल्लिखित अपराध के संबंध में या इन्हीं तथ्यों से उत्पन्न अन्य कोई अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार सम्पूर्ण उत्तराखंड राज्य के सम्बन्ध में करती है ।

[फा. सं. 228/59/2012-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 290.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttarakhand, Home Section -1, Dehradun vide Notification No. 3124/XX(1)-2012-9(14)2012 dated 12th October, 2012, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttarakhand for investigation of case No. 234/2012 under Section 365 of Indian Penal Code 1860 (Act No. 45 of 1860) registered at Police Station Kankhal, Haridwar relating to disappearance of Swami Shankar Dev, Founder, Divya Yoga Mandir Trust, Haridwar, Uttarakhand and attempts, abetments and conspiracy in relation to or in connection with the above mentioned offence and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/59/2012-AVD-II]

RAJIV JAIN, Under Secy.

सीमा शुल्क के आयुक्त का कार्यालय

पुणे, 12 दिसम्बर, 2012

सं. 04/2012

का. आ. 291 .—केन्द्रीय उत्पाद शुल्क तथा सीमा शुल्क बोर्ड, नई दिल्ली द्वारा सीमा शुल्क अधिनियम, 1962 की धारा 7 के अधीन जारी दिनांक 15 दिसम्बर 2004 की अधिसूचना संख्या 134/2004-सीमा शुल्क (एन टी) में केल्शी बन्दरगाह को बॉक्साईट कच्ची धातु के निर्यात के लिए लदान हेतु अधिसूचित किया गया ।

2. सीमा शुल्क अधिनियम, 1962 की धारा 8 के अधीन दिनांक 10-12-2004 की अधिसूचना संख्या 29/2004-सीमा शुल्क (एन टी) में केल्शी बन्दरगाह के धनवटे जेट्टी को बाक्साईट कच्ची धातु के लदान तथा समुद्री व्यापार स्थान के रूप में अधिसूचित किया गया।

3. मेसर्ज आशापुरा माईनकेम लिमिटेड ने दिनांक 8-11-2012 के अपने पत्र में दिनांक 10-12-2004 की अधिसूचना संख्या 29/2004-सीमा शुल्क(एन टी) में संशोधन हेतु यह अनुरोध किया है कि समुद्री व्यापार के बाद "निर्यात" शब्द को जोड़ा जाए ।

4. तदनुसार, मैं, वासा शेषगिरि राव, आयुक्त, सीमा शुल्क, पुणे, सीमा शुल्क अधिनियम, 1962 की धारा 8 के अधीन एतद्द्वारा निम्नलिखित अनुसूची के स्तंभ 3 में विनिर्दिष्ट स्थान केल्शी बन्दरगाह के धनवटे जेट्टी को बाक्साईट कच्ची धातु के निर्यात के लिए लदान तथा समुद्री व्यापार के लिए मंजूरी प्रदान करता हूँ ।

अनुसूची

क्रम सं.	पार्टी का नाम	लदान का स्थान	क्षेत्र (स्क्वेर मीटर में)	सीमाएँ
1	2	3	4	5
1.	मैसर्ज आशापुरा माईनकेम लिमिटेड	धनवटे जेट्टी, साईट तथा सामने का पानी, गाँव सखरी, तालुका-मंडनगढ, जिला रत्नागिरी (सर्वे नं. 42 की जमीन का हिस्सा)	जमीन का पक्ष 1500, सामने का पानी 2000 कुल 3500	उत्तर : सर्वे नं. 42 पूर्व : सर्वे नं. 32 पश्चिम : केल्शी खाडी दक्षिण: सर्वे नं. 43

[फा. सं. VIII/सी.शु./48-51/टीसी/2011/4513]

वासा शेषगिरि राव, आयुक्त

OFFICE OF THE COMMISSIONER OF CUSTOMS

Pune, the 12th December, 2012

No. 04/2012

S.O. 291.— Notification No. 134/2004-Customs (NT) dtd. 15th Dec., 2004 was issued under Section 7 of the Customs Act., 1962 by the Central Board of Excise & Customs, New Delhi notifying Kelshi port for loading of Bauxite ore for export.

2. Notification No.29/2004-Cus. (NT) dated 10-12-2004 approved the Dhanwatay Jetty at Kelshi Port as place for loading of Bauxite ore for coastal trade under Section 8 of the Customs Act., 1962.

3. M/s. Ashapura Minechem Ltd. vide their letter dtd. 08-11-2012 requested for amendment in Notification No. 29/2004.Cus. (NT) dated 10-12-2004 for adding the word "Export"after Coastal trade.

4. Accordingly, I, Vasa Seshagiri Rao, Commissioner of Customs, Pune, under Section 8 of the Customs Act, 1962 hereby approve the place namely Dhanwatay Jetty at Kelshi Port specified in column 3 of Schedule to this Notification for loading of Bauxite ore for export and also for coastal trade.

SCHEDULE

S. No.	Name of the Party	Loading Place	Area (in sq. Mtrs)	Limits
1	2	3	4	5
1.	M/s.Ashapura Minechem Ltd.	Dhanwatay Jetty, site and water front, village Sakhri, Taluka-Mandangarh Dist. Ratnagiri (part of the land in S.No. 42)	Land side 1500, water frontage 2000 Total 3500	North : Survey No. 42 East : Survey No. 32 West : Kelshi Creek South : Survey No. 43

[F. No. VIII/CUS/48-51/TC/2011/4513]

VASA SESHAGIRI RAO, Commissioner

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 30 जनवरी, 2013

का. आ. 292 .—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 (छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री महेश कुमार गुप्ता (जन्म तिथि 1-1-1951) को सनदी लेखाकार श्रेणी के अंतर्गत उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है ।

[फा.सं. 6/16/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 30th January, 2013

S. O. 292 .— In exercise of the powers conferred by sub-section 3 (g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri Mahesh Kumar Gupta (DoB: 1-1-1951) as part-time non-official director

under Chartered Accountant category on the Board of Directors of Punjab & Sind Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/16/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 4 फरवरी, 2013

का. आ. 293 .—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा 6 के साथ पठित धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा, श्री आर. सी. मिश्रा और श्री गोपाल कृष्ण चतुर्वेदी को 80,000 रुपए (नियत) के वेतनमान में पद का कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा उनके 65 वर्ष की आयु प्राप्त कर लेने तक अथवा एएआईएफआर के समापन तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण (एएआईएफआर) में सदस्य के रूप में नियुक्त करती है ।

[फा. सं. 20/2/2012-आईएफ-II]

उदय भान सिंह, अवर सचिव

New Delhi, the 4th February, 2013

S. O. 293 .—In exercise of the powers conferred by section 5 read with Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985,(1 of 1986), the Central Government hereby appoints Shri R.C. Mishra and Shri Gopal Krishna Chaturvedi, as Members, Appellate Authority for Industrial and Financial Reconstruction (AAIFR), in the scale of pay of Rs. 80,000 (fixed) for a period of three years w.e.f. the date of assumption of the charge of the post or till they attain the age of 65 years or till the abolition of AAIFR or until further orders, whichever is the earliest.

[F.No. 20/2/2012-IF-II]

UDAI BHAN SINGH, Under Secy.

नई दिल्ली, 4 फरवरी, 2013

का. आ. 294 .—जीवन बीमा अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्द्वारा श्री राजीव टकरू, सचिव, वित्तिय सेवाएं विभाग को श्री डी. के. मित्तल के स्थान पर तत्काल प्रभाव से और अगले आदेशों तक उक्त निगम के सदस्य के रूप में नियुक्त करती है ।

[फा. सं. 14/3/2003-बीमा-IV]

ललित कुमार, निदेशक (बीमा)

New Delhi, the 4th February, 2013

S. O. 294 .—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Rajiv Takru, Secretary, Department of Financial Services as Member of the said Corporation vice Shri D.K. Mittal, with immediate effect till further orders.

[F. No.14/3/2003-Ins.-IV]

LALIT KUMAR, Director (Insurance)

नई दिल्ली, 4 फरवरी, 2013

का. आ. 295 .—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ङ) के उप-खंड (i) के अनुसरण में केन्द्रीय सरकार, एतद्द्वारा श्री राजीव टकरू, सचिव, वित्तिय सेवाएं विभाग, वित्त मंत्रालय, नई दिल्ली को अगले आदेशों तक, श्री डी. के. मित्तल के स्थान पर भारतीय निर्यात-आयात बैंक (एग्जिम बैंक) के निदेशक मण्डल में निदेशक के रूप में नामित करती है ।

[फा. सं. 9/16/2012-आईएफ-I]

एस. गोपाल कृष्ण, अवर सचिव

New Delhi, the 4th February, 2013

S. O. 295 .—In pursuance of sub-clause (i) of clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), Central Government hereby nominates Shri Rajiv Takru, Secretary, Departmental of Financial Services, Ministry of Finance, New Delhi as a Director on the Board of Directors of Export Import Bank of India with Immediate effect and until further orders vice Shri D. K. Mittal.

[F. No. 9/16/2012-IF-I]

S. GOPAL KRISHNA, Under Secy.

उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 24 जनवरी, 2013

का.आ. 296 .—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भामा.सं.	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3893686	4-12-2012	मिलन हाइट्रीक पम्पस प्राइवेट लिमिटेड रीवीरा इन्डस्ट्रीयल एस्टेट, आर. एस नम्बर 255, जीईबी 66, के. बी. ए. सबस्टेशन रोड के पास, प्लोट नम्बर 1/4, राष्ट्रीय राजमार्ग 8-बी, शापर, तालुका कोटडा सांगानी, जिला राजकोट, गुजरात-360024	निमज्जनीय पम्प सेट	8034	0	0	2002
2.	3894688	5 12 2012	रूप ज्वेलर्स 4 शीव आर्चद, पेलेस रोड, राजकोट गुजरात, आन्ध्रप्रदेश	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहारांकन	1417	0	0	1999
3.	3895185	5 12 2012	कविता बेवरेजिस, प्लोट नं. 15, चित्रा, जिला भावनगर, गुजरात	पैकेजबंद पेयजल पैकेजबंद प्राकृतिक मिनरल जल के अलावा	14543	0	0	2004
4.	3895993	7 12 2012	ज्रिल ज्वेलर्स प्रनामी टेम्पल, गोंधिया शेरी, जिला दिव, दमन दिव 362520	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहारांकन	1417	0	0	1999
5.	3896086	7 12 2012	जिगर पम्प इंडस्ट्रीज हरीओम इन्डस्ट्रीयल एरिया, प्लोट नं. 3, सर्वे नं. 141, राजकोट, गुजरात 360003	निमज्जनीय पम्प सेट	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	3896187	10-12-2012	पाला ज्वेलर्स पटेल रोड, केशोद, जिला जुनागढ, गुजरात 362220	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
7.	3896288	10-12-2012	विमला वुड क्राफ्टस सर्वे नम्बर 400, पार्ट-अ राष्ट्रीय धोरी मार्ग नं 8-अ, भीमसर पडाना रोड भिमासर, चाकसर, वाया गोपालपुरी, तालुका अंजार, जिला कच्छ, गुजरात 370240	ब्लॉक बोर्ड	1659	0	0	2004
8.	3896591	12-12-2012	कालिन्दी इन्जीनियर्स 4 गोकुलनगर, निरव कोम्प्लेक्स के पिछे, गोकुलनगर मैन रोड, राजकोट, गुजरात 360004	निमज्जनीय पम्प सेट	8034	0	0	2002
9.	3897492	17-12-2012	छतारीया फायरटेक इन्डस्ट्रीज 89 जीआईडीसी एस्टेट, महुआ, जिला भावनगर, गुजरात 364290	अग्नि शमन के लिए नियंत्रित अंत:स्रावी हौज	8423	0	0	1994
10.	3898393	17-12-2012	सोनी जेरामभाई परशोतमभाई स्वामी मंदिर के पास, बिसाबदर, जिला जुनागढ, गुजरात 362130	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
11.	3897593	18-12-2012	कोर केबल्स प्राईवेट लिमिटेड प्लोट नं 2333, डी-2 रोड डी, जी आई डी सी मेटोडा, कालावाड रोड, तालुका लोधिका, जिला राजकोट, गुजरात	क्रॉसलिंक्ड पॉलीथीन से रोधित पीवीसी के खोल चढ़ी केबल भाग I 1100 वो. तक कार्यकारी वोल्टता के लिए	7098	1	0	1988
12.	3898494	18-12-2012	चामुंडा ज्वेलर्स खारा कुवा, पोलिस स्टेशन रोड, लिमडी, जिला सुरेन्द्रनगर, गुजरात 363421	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
13.	3898595	18-12-2012	बालाजी पोलिमर्स प्लोट नं 1/12, जय सियाराम इन्डस्ट्रीयल एरिया, राजकोट, गुजरात	पेय जल आपूर्ति, मल और औद्योगिक बहिस्रावों हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
14.	3898696	19-12-2012	विमला वुड क्राफ्टस सर्वे नम्बर 400, पार्ट-अ राष्ट्रीय धोरी मार्ग नं 8-अ, भीमसर पडाना रोड भिमासर, चाकसर, वाया गोपालपुरी, तालुका अंजार, जिला कच्छ, गुजरात 370240	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
15.	3898797	19-12-2012	विमला वुड क्राफ्टस सर्वे नम्बर 400, पार्ट-अ राष्ट्रीय धोरी मार्ग नं 8-अ, भीमसर पडाना रोड भिमासर, चाकसर, वाया गोपालपुरी, तालुका अंजार, जिला कच्छ, गुजरात 370240	लकंड़ी के सपाट दरवाजे के शटर(ठोस कोर टाइप) भाग I प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999
16.	3898801	19-12-2012	ओरिएन्टल प्लाईबोर्ड प्रा.लि. सर्वे नं 4/1, 4/2, गांव वरसाना, तालुका अंजार, जिला कच्छ, गुजरात	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
17.	3898902	19-12-2012	ओरिएन्टल प्लाईबोर्ड प्रा.लि. सर्वे नं 4/1, 4/2, गांव वरसाना, तालुका अंजार, जिला कच्छ, गुजरात	ब्लॉक बोर्ड	1659	0	0	2004
18.	3899092	19-12-2012	ओरिएन्टल प्लाईबोर्ड प्रा.लि. सर्वे नं 4/1, 4/2, गांव वरसाना, तालुका अंजार, जिला कच्छ, गुजरात	सामान्य प्रयोजनो के लिए प्लाईवुड	303	0	0	1989
19.	3899193	19-12-2012	ओरिएन्टल प्लाईबोर्ड प्रा.लि. सर्वे नं 4/1, 4/2, गांव वरसाना, तालुका अंजार, जिला कच्छ, गुजरात	लकड़ी के सपाट दरवाजे के शटर (ठोस कोर टाइप) भाग I प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
20	3899597	19-12-2012	श्री कृष्ना ज्वेलर्स मंदिर चौक, द्वारका, जिला जामनगर, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
21.	3900051	20-12-2012	सोना ज्वेलर्स सोनी बाजार, सवजीभाई शेरी के पीछे, राजकोट, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
22.	3901154	26-12-2012	गुरूदेव मिनरल, उमीया फ्लेट, 1 फ्लोर, फ्लेट1, 80 फीट रोड, भक्ति नंदन सर्कल, वाठवान, जिला सुरेन्द्रनगर, गुजरात 363035	पैकेजबंद पेयजल पैकेजबंद प्राकृतिक मिनरल जल के अलावा	14543	0	0	2004
23.	3901861	31-12-2012	अर्जुन ज्वेलर्स दुकान नं 2, स्वागत आर्केड, मावडी चोकडी, जीथरीया हनुमान, राजकोट, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
24.	3901962	31-12-2012	शिव बेवेरेजिस, प्लॉट नं. 85, कामिनीयानगर, तलाजा रोड जिला भवनगर, गुजरात 364002	पैकेजबंद पेयजल पैकेजबंद प्राकृतिक मिनरल जल के अलावा	14543	0	0	2004

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एस. राधाकृष्ण, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 24th January, 2013

S.O. 296 .—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3893686	4-12-2012	Millen Hytric Pumps Pvt. Ltd Riviera Industiral Estate, R. S. No. 255, Near GEB 66, K. V.A. Substation, Road, Plot No. 1/4, N.H. 8-B, Shapar Taluka Kotda Sangani, District : Rajkot Gujarat-360024	Submersible Pumpsets	8034	0	0	2002
2.	3894688	5-12-2012	Rup Jewellers, 4/Shiv Arched, Palace Road, Rajkot, Gujarat	Gold and gold alloys, Jewellery/ Artefacts—Fineness Marking	1417	0	0	1999
3.	3895185	5-12-2012	Kavita Beverages. Plot No. 15, Vishramnagar, Chitra, District : Bhavnagar, Gujarat	Packaged drinking water	14543	0	0	2004
4.	3895993	7-12-2012	Zeel Jewellers, Near Pranami Temple, Ghodiya Street, District Diu, Daman & Diu-362520	Gold and gold Alloys, Jewellery/ Artefacts—Fineness Marking	1417	0	0	1999
5.	3896086	7-12-2012	Jigar Pump Industries Hariom Industrial area, Plot No. 3,, Survey No. 141, Rajkot, Gujarat -360003	Submersible Pumpsets	8034	0	0	2002
6.	3896187	10-12-2012	Pala Jewellers, Patel Road, Keshod, District: Junagadh, Gujarat -362220	Gold and gold Alloys, Jewellery/ Artefacts --Fineness Marking	1417	0	0	1999
7.	3896288	10-12-2012	Vimla Wood Crafts Survey No. 400, Part-A Off National Highway No. 8-A, Bhimasar Padana Road, Bhimasar-Chakasar, Via Gopalpuri, Taluka -Anjar, Bhimasar, District : Kachchh, Gujarat-370240	Block boards	1659	0	0	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
8.	3896591	12-12-2012	Kalindee Engineers 4-Gokulnagar, Behaind Nirav Complex, Gokuldham Main Road, District : Rajkot, Gujarat- 360004	Submersible Pumpsets	8034	0	0	2002
9.	3897492	17-12-2012	M/s. Chhatariya Firetech Industries 89, G. I. D. C. Estate, Mahuva, District :Bhavnagar, Gujarat-364290	Specification for controlled percolating hose for fire fighting	8423	0	0	1994
10.	3898393	17-12-2012	Soni Jerambhai, Parshotambhai, Near Swami Mandir, Vishavadar, District: Junagadh, Gujarat -362130	Gold and gold Alloys, Jewellery/ Artefacts—Fineness Marking	1417	0	0	1999
11.	3897593	18-12-2012	Core Cables Pvt. Ltd. Plot No. 2333, D-2 Road GIDC, GIDC Metoda, Kalawad Road, District: Rajkot, Gujarat	Crosslinked polyethylene insulated PVC sheathed cables : Part 1 for working voltage upto and including 1100 V	7098	1	0	1988
12.	3898494	18-12-2012	Chamuda Jewellers, Khara Kuva, Police Station Road, Limbdi, District : Surendranagar, Gujarat-363421	Gold and gold Alloys, Jewellery/ Artefacts—Fineness and Marking	1417	0	0	1999
13.	3898595	18-12-2012	Balaji Polymers, Plot No. 1/12, Jay Siyaram Industries Area, Rajkot, Gujarat	High density ploycthylene pipes for water supplies	4984	0	0	1995
14.	3898696	19-12-2012	Vimla Wood Crafts Survey No. 400, Part-A Off National Highway No. 8-A, Bhimasar Padana Road, Bhimasar-Chakasar, Via Gopalpuri, Taluka -Anjar, Bhimasar, District : Kachchh, Gujarat-370240	Plywood for general purposes	303	0	0	1989

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
15.	3898797	19-12-2012	M/s. Vimla Wood Crafts Survey No. 400, Part-A Off National Highway No. 8-A, Bhimasar Padana Road, Bhimasar-Chakasar, Via Gopalpuri, Taluka -Anjar, Bhimasar, District : Kachchh, Gujarat-370240	Wooden flush door shutters (solid core type) : Part 1 Ply-wood face panels	2202	1	0	1999
16.	3898801	19-12-2012	Oriental Plyboard Pvt.Ltd. Survey No. 4/1, 4/2, Village Varsana, Taluka Anjar, District : Kachchh Gujarat	Marine Plywood	710	0	0	2010
17.	3898902	19-12-2012	Oriental Plyboard Pvt.Ltd. Survey No. 4/1, 4/2, Village Varsana, Taluka Anjar, District : Kachchh Gujarat	Block boards	1659	0	0	2004
18.	3899092	19-12-2012	Oriental Plyboard Pvt.Ltd. Survey No. 4/1, 4/2, Village Varsana, Taluka Anjar, District : Kachchh Gujarat	Plywood for general purposes	303	0	0	1989
19.	3899193	19-12-2012	Oriental Plyboard Pvt.Ltd. Survey No. 4/1, 4/2, Village Varsana, Taluka Anjar, District : Kachchh Gujarat	Wooden flush door shutters (solid core type) : Part 1 Ply-wood face panels	2202	1	0	1999
20.	3899597	19-12-2012	Shree Krishna Jewellers, Mandir Chowk, Dwarka, District: Jamanagar, Gujarat	Gold and gold Alloys, Jewellery/ Artefacts Fineness and Marking Specification	1417	0	0	1999
21.	3900051	20-12-2012	Sona Jewellers, Soni Bazar, Opp. Savjibhai Street, Rajkot, Gujarat	Gold and gold Alloys, Jewellery/ Artefacts—Fineness and Marking	1417	0	0	1999
22.	3901154	26-12-2012	Gurudev Mineral Umiya Flat, 1st Floor, Flate 1, 80 ft. Road, Bhakti Nandan Circle, Wadhwan, District : Surendranagar, Gujarat- 363035	Packaged drinking water	14543	0	0	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
23.	3901861	31-12-2012	Arjun Jewellers, Shop No 2, Swagat Arked Mavdi Chokadi, Near Jithariya Hanuman, Rajkot, Gujarat	Gold and Gold Alloys, Jewellery/ Artefacts—Fineness and Marking	1417	0	0	1999
24.	3901962	31-12-2012	Shiv Beverages Plot No. 85, Kaminiyanagar, Talaja Road, District : Bhavnagar, Gujarat-364002	Packaged drinking water	14543	0	0	2004

[No. CMD/13:11]

M. RADHAKRISHNA, Scientist 'F' & Head

नई दिल्ली, 24 जनवरी, 2013

का.आ. 297 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1121(भाग 3) : 2012 प्राकृतिक निर्माण पत्थरों के सामर्थ्य गुणों को ज्ञात करना - परीक्षण पद्धतियाँ भाग 3 तनन सामर्थ्य (दूसरा पुनरीक्षण)	आई एस 1121(भाग 3) : 1974 प्राकृतिक निर्माण पत्थरों के सामर्थ्य गुणों को ज्ञात करना परीक्षण पद्धतियाँ भाग 3 तनन सामर्थ्य (पहला पुनरीक्षण)	31 दिसम्बर, 2012

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 24th January, 2013

S.O. 297 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against it :—

SCHEDULE

Sl.No.	No. and Year of the Indian Standard Established and Title	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 1121 (Part 3) : 2012 Determination of Strength properties of natural building stones - Methods of test : Part 3 Tensile Strength (Second revision)	IS 1121 (Part 3) : 1974 Determination of Strength properties of natural building stones - Methods of test : Part 3 Tensile Strength (first revision)	31 December, 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 24 जनवरी, 2013

का.आ. 298 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15972 : 2012 बांस-पटसन कंपोजिट की नालीदार और अर्ध-नालीदार चद्दरें- विशिष्ट		31 12 2012

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 24th January, 2013

S.O. 298 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :-

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 15972 : 2012 Bamboo-Jute Composite Corrugated and Semi-Corrugated Sheets-Specification	-	31-12-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 30 जनवरी, 2013

का.आ. 299 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :–

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/एस ओ 8528-1 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 1 अनुप्रयोग, रेंटिंग एवं कार्यकारिता	-	नवंबर, 2012
2.	आई एस/एस ओ 8528-2 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 2 इंजन	-	नवंबर, 2012
3.	आई एस/एस ओ 8528-3 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 3 जनरेटिंग सेटों के लिए प्रत्यावर्ती धारा प्रवाह जनरेटर	-	नवंबर, 2012
4.	आई एस/एस ओ 8528-4 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 4 कंट्रोलगियर एवं स्विचगियर	-	नवंबर, 2012

(1)	(2)	(3)	(4)
5.	आई एस/एस ओ 8528-2 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 5 जनरेटिंग सेट	-	नवंबर 2012
6.	आई एस/एस ओ 8528-6 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 6 परीक्षण पद्धतियाँ	-	नवंबर 2012
7.	आई एस/एस ओ 8528-7 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 7 विशिष्टि एवं डिजाइन की तकनीकी घोषणा	-	नवंबर 2012
8.	आई एस/एस ओ 8528-8 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 8 कम पावर के जनरेटरों के लिए अपेक्षाएं एवं परीक्षण	-	नवंबर 2012
9.	आई एस/एस ओ 8528-9 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 9 मेकैनिकल कम्पनों का मापन एवं मूल्यांकन	-	नवंबर 2012
10.	आई एस/एस ओ 8528-10 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 10 एनवेलपिंग सतह पद्धति द्वारा वायुजनित शोर को मापना		दिसम्बर 2012
11.	आई एस/एस ओ 8528-12 : 2005 प्रत्यागामी आंतरिक दहन इंजन चालित प्रत्यावर्ती धारा जनरेटिंग सेट भाग 12 सुरक्षा सेवाओं के लिए आपातकालीन पावर सप्लाई		दिसंबर 2012
12.	आई एस 11509 (भाग 1) : 2012/आई एस ओ 4548:1 1997 आंतरिक दहन इंजनों के लिए पूर्ण प्रवाह के स्नेहन तेल फिल्टरों की परीक्षण पद्धतियाँ भाग 1 विभिन्न दबाव/प्रवाह के गुणधर्म (पहला पुनरीक्षण)		दिसंबर 2012
13.	आई एस 11509 (भाग 2) : 2012/आई एस ओ 4548:2 1997 आंतरिक दहन इंजनों के लिए पूर्ण प्रवाह के स्नेहन तेल फिल्टरों की परीक्षण पद्धतियाँ भाग 2 ऐलीमेंट बाई पास वाल्व गुणधर्म (पहला पुनरीक्षण)		दिसंबर 2012
14.	आई एस 11509 (भाग 3) : 2012/आई एस ओ 4548:3 1997 आंतरिक दहन इंजनों के लिए पूर्ण-प्रवाह के स्नेहन तेल फिल्टरों की परीक्षण पद्धतियाँ भाग 3 उच्च विभिन्न दबाव एवं बढ़े हुए तापमान को प्रतिरोधता (पहला पुनरीक्षण)		दिसंबर 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टी ई डी/जी-16]

पी. सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 30th January, 2013

S.O. 299 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No., Year and title of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS/ISO 8528-1 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 1 : Application, ratings and performance	—	November 2012
2.	IS/ISO 8528-2 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 2 : Engines	—	November 2012
3.	IS/ISO 8528-3 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 3 : Alternating, current generators for generating sets	—	November 2012
4.	IS/ISO 8528-4 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 4 : Controlgear and Switchgear	—	November 2012
5.	IS/ISO 8528-5 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 5 : Generating sets	—	November 2012
6.	IS/ISO 8528-6 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 6 : Test Methods	—	November 2012

(1)	(2)	(3)	(4)
7.	IS/ISO 8528-7 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 7 : Technical declarations for specification and design	—	November 2012
8.	IS/ISO 8528-8 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 8 : Requirements and tests for Low-Power generating sets	—	November 2012
9.	IS/ISO 8528-9 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 9 : Measurement and evaluation of mechanical vibrations	—	November 2012
10.	IS/ISO 8528-10 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 10 : Measurement of airborne noise by the enveloping surface method		December 2012
11.	IS/ISO 8528-12 : 2005 Reciprocating internal combustion engine driven alternating current generating sets Part 12 : Emergency power supply to safety services		December 2012
12.	IS 11509 (Part 1) : 2012/ISO 4548-1 : 1997 Method of test for full-flow lubricating oil filters for internal combustion engines Part 1 Differential pressure/flow characteristices (First revision)	—	December 2012
13.	IS 11509 (Part 2) : 2012/ISO 4548-2 : 1997 Method of test for full-flow lubricating oil filters for internal combustion engines Part 2 Element by-pass valve characteristices (First revision)		December 2012
14.	IS 11509 (Part 3) : 2012/ISO 4548-2 : 1997 Method of test for full-flow lubricating oil filters for internal combustion engines Part 3 Resistance to high pressure drop and elevated temperature		December 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TED/G-16]

P. C. JOSHI, Scientist 'F' & Head (Transport Engg.)

कोयला मंत्रालय

नई दिल्ली, 28 जनवरी, 2013

का.आ. 300.— केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि से कोयला अभिप्राप्त होने की संभावना है ;

और, रेखांक संख्याक आरईवी/08/2012, तारीख 13 सितम्बर, 2012 को उक्त अनुसूची में वर्णित भूमि के क्षेत्र का ब्यौरा अन्तर्विष्ट किया गया है, का निरीक्षण सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, रांची-834 029 (झारखंड) के कार्यालय में या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजु क्षेत्र, जिला रामगढ़, झारखंड के कार्यालय में, या उपायुक्त, जिला हजारीबाग, झारखंड के कार्यालय में या महाप्रबंधक (खोज प्रभाग), आरआई-III, सेंट्रल माईन प्लानिंग और डिजाइन इंस्टीट्यूट, गौंडवाना प्लेस, कांके रोड, रांची-834 001, झारखंड के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700 001 के कार्यालय में किया जा सकता है;

अत:, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमियों से कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति --

(i) अधिनियम की धारा 6 के अधीन किसी नुकसानी या उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन होने वाले नुकसान की संभावना के लिए प्रतिकर का दावा कर सकेगा ;

(ii) अधिनियम की धारा 13 की उप-धारा (1) के अधीन समाप्त हो गई पूर्वेक्षण अनुज्ञप्तियों के संबंध में या अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गए खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को सुपुर्द करेगा ।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर, महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजु क्षेत्र, जिला- रामगढ़ (झारखंड) या महाप्रबंधक,सेंट्रल कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, दरभंगा हाउस, रांची- 834 029 (झारखंड) के कार्यालय को भेज सकेगा।

पिंडरा विवृत परियोजना

जिला-हजारीबाग (झारखंड)

(रेखांक संख्याक आरईवी/08/2012, तारीख 13 सितम्बर, 2012

अनुसूची

क्र.सं.	मौजा/ग्राम	थाना	ग्राम/ थाना संख्या	जिला का नाम	क्षेत्र (एकड़ में)	क्षेत्र (हेक्टर में)	टिप्पणियां
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	पिंडरा	मान्डु	52	हजारीबाग	195.11	78.99	भाग
कुल :					195.11 (लगभग)	78.99 (लगभग)	

पिंडरा ग्राम में अर्जित किए जाने वाले प्लाटों के आशय - 6,9,10,11,13,31,40,54, 57,60, 63, 67,68,71,83,90,94,96,98,103,122,142,177,213(भाग),214(भाग),106,112,113,131,164, 176,36,215,216,2/220,15/223, 50,200,53,142,213 ।

सीमा वर्णन:

क-ख-ग-घ-ड. रेखा, बिन्दु 'क' से प्रारंभ होकर सीमरा नदी के मध्य और ग्राम हुआग और पिंडरा, पिंडरा और रबोध, पिंडरा और डटमा के सम्मिलित रेखा से गुजरती है और बिन्दु 'ड.' पर मिलती है ।

ड.-च-छ रेखा, करगजवा नदी के मध्य रेखा से गुजरती है हुई बिन्दु 'ड.' से होकर गुजरती है फिर बिन्दु 'छ' पर मिलती है।

छ-ज रेखा बिन्दु 'छ' से दुमुहानी नदी के मध्य से गुजरती हुई जाती है और आरंभिक बिन्दु 'क' पर मिलती है ।

[फा. सं. 43015/25/2012 पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

MINISTRY OF COAL

New Delhi, the 28th January, 2013

S.O. 300.— Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto;

And, whereas, the plan bearing number Rev/08/2012, dated the 13th September, 2012 containing details of the areas of lands described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi-834 029 (Jharkhand) or at the office of the General Manager, Central Coalfields Limited, Kuju Area, District- Ramgarh, Jharkhand, Deputy Commissioner, District- Hazaribagh, Jharkhand, or at the office of the General Manager (Exploration Division), RI-III, Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi-834 001, Jharkhand or at the office of the Coal Controller, 1, Council House Street, Kolkata-700 001 ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from the lands described in the said Schedule ;

Any persons interested in the land described in the said Schedule may -

(i) claim compensation under section 6 of the Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act ; or

(ii) claim compensation under sub-section (1) of section 13 of the Act in respect of prospecting licenses ceasing to have effect or under sub-section (4) of section 13 of the Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the office of the office of the General Manager, Central Coalfields Limited, Kuju Area, District-Ramgarh (Jharkhand) or General Manager, Central Coalfields Limited, Land and Revenue Department, Darbhanga House, Ranchi-834 029 (Jharkhand) within a period of ninety days from the date of publication of this notification.

Pindra Open Cast Project

District-Hazaribagh (Jharkhand)

(Plan bearing number Rev/08/2012, dated the 13th September, 2012)

SCHEDULE

Sl. No.	Mauja/ Village	Thana	Village/ Thana number	Name of District	Area (in acres)	Area (in hectares)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	PINDRA	MANDU	52	HAZARI BAGH	195.11	78.99	PART
					Total: 195.11 acres (approximately) or 78.99 hectares (approximately)		

Intention of Plot number to be acquired in Village Pindra – 6, 9, 10, 11, 13, 31, 40, 54, 57, 60, 63, 67, 68, 71, 83, 90, 94, 96, 98, 103, 122, 142, 177, 213(Part),214(Part),106, 112, 113, 131, 164, 176, 36, 215, 216, 2/220,15/223, 50, 200, 53, 142, 213.

Boundary Description:

A-B-C-D-E — Line start from point A passes through center line of simra Nadi and common boundary of village Huwag and Pindra, Pindra and Rabodh, Pindra and Datma and meets at point E.

E-F-G — Line passes through point E pases through centre line of Karjwa Nadi and meets at point G.

G-A — Line passes through point G passes through centre line of Dumuhani Nadi and meets at starting point A.

[F. No. 43015/25/2012-PRIW-I]

V. S. RANA, Under Secy.

CORRIGENDUM

New Delhi, the 30th January, 2013

S.O. 301.— In the notification of the Government of India in the Ministry of Coal number S.O. 1751 dated the 24th August, 2012 and published in the Gazette of India, Part II, Section 3, sub-section (ii) dated 1st September, 2012, in the English version of the said Order, number S.O. 1751 shall be substituted by number S.O. 2751.

[F. No. 43015/21/1987-LSW (Part)/PRIW-I]

V. S. RANA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 30 जनवरी, 2013

का.आ. 302.— केन्द्रिय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत के राजपत्र तारीख 28.08.2012 में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गेस मंत्रालय की अधिसुचना का.आ 2345, तारीख 20 जुलाइ, 2012 द्वारा संशोधित मे निम्नलिखित रूप से संशोधन करती है, अर्थात

उक्त अधिसुचना: में शब्द "गुजरात स्टेट पेट्रोनेट लिमीटेड की महेसाणा - भटिण्डा और भटिण्डा - जम्मू पाइपलाइन्स" के स्थान पर "जीएसपीएल इंडिया गैसनेट लिमीटेड(जीआइजीएल) की महेसाणा - भटिण्डा और भटिण्डा - जम्मू पाइपलाइन्स" शब्द रखे जायेंगे ।

अनुसूची

क्र.सं.	प्राधिकारी का पद एवं पता	पंजाब राज्य में क्षेत्राधिकार
1	जिला राजस्व अधिकारी *कार्यालय उप–आयुक्त* न्यू कोर्ट परिसर, मानसा, पंजाब	*मानसा जिला*
2	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त मिनी सचिवालय, भटिण्डा, पंजाब	भटिण्डा जिला
3	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त, सत्लुज ब्लाक, जिला प्रशासनिक परिसर, मोगा पंजाब	मोगा जिला
4	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त मिनी सचिवालय, लुधियाना, पंजाब	लुधियाना जिला

क्र.सं.	प्राधिकारी का पद एवं पता	पंजाब राज्य में क्षेत्राधिकार
5	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त योजना भवन परिसर, जिला कचिहरी, कपूरथला, पंजाब	कपूरथला जिला
6	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त, जिला प्रशासनिक परिसर, होशियारपुर, पंजाब	होशियारपुर जिला
7	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त जिला कचिहरी, गुरदासपुर, पंजाब	गुरदासपुर जिला
8	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त, फिरोजपुर, पंजाब	फिरोजपुर जिला
9	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त जिला प्रशासनिक परिसर, जालन्धर, पंजाब	जालन्धर जिला
10	जिला राजस्व अधिकारी कार्यालय उप–आयुक्त, अमृतसर, पंजाब	अमृतसर जिला

2. यह अधिसूचना जारी होने की तारीख से लागु होगी

[फा. सं. एल-14014/39/2012 जी.पी.]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 30th January, 2013

S.O. 302.— In pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas vide S.O. No.2345, dated 20.07.2012 published in the Gazette of India dated 28.07.2012; namely

In the said notification for the words "Gujarat State Petronet Limited's Mehsana – Bhatinda and Bhatinda – Jammu – Srinagar Pipelines" the words "GSPL INDIA GASNET LIMITED (GIGL)'s Mehsana – Bhatinda and Bhatinda – Jammu – Srinagar Pipelines" shall be substituted.

SCHEDULE

Sl No.	Designation and Address of the Authority	Area of Jurisdiction in the State of Punjab
1	District Revenue Officer, Office of the Deputy Commissioner, New Court Complex, Mansa, Punjab	District of Mansa
2	District Revenue Officer, Office of Deputy Commissioner, Mini Secretariat, Bhatinda, Punjab	District of Bhatinda
3	District Revenue Officer, Office of Deputy Commissioner, Satluj Block, District Administrative Complex, Moga, Punjab	District of Moga
4	District Revenue Officer, Office of Deputy Commissioner, Mini Secretariat, Ludhiana, Punjab	District of Ludhiana
5	District Revenue Officer, Office of Deputy Commissioner, Yojna Bhavan Complex, District Court, Kapurthala, Punjab	District of Kapurthala
6	District Revenue Officer,	District of Hoshiarpur
	Office of Deputy Commissioner, District Administrative Complex, Hoshiarpur, Punjab	
7	District Revenue Officer, Office of Deputy Commissioner, District Courts, Gurdaspur, Punjab	District of Gurdaspur
8	District Revenue Officer, Office of Deputy Commissioner, Firozepur, Punjab	District of Firozepur
9	District Revenue Officer, Office of the Deputy Commissioner, District Administrative complex, Jalandhar, Punjab	District of Jalandhar
10	District Revenue Officer, Office of Deputy Commissioner, Amritsar, Punjab	District of Amritsar

2. This notification will be effective from the date of its issue.

[F. No. L-14014/39/2012-G.P.]

A. GOSWAMI, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 303.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : जामालपुर		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	आबूजहाटी – 111	1253/2512	00	01	10
		1319	00	00	20
		1321	00	09	10
		1327	00	06	00
		1323	00	03	00
		1326	00	00	20
		2494	00	01	70
		1324	00	07	90
		1366	00	02	20
		1367	00	06	90
		1369	00	00	60
		1368	00	05	40
		1370	00	01	00

1	2	3	4	5	6
	आबूजहाटी – 111	1385	00	03	00
	जारी.....	1383	00	03	60
		1382	00	01	20
		1382 / 4460	00	02	60
		1387	00	06	70
		1388	00	00	20
		1381	00	00	20
		1379 / 4459	00	05	90
		1393	00	04	20
		1392	00	05	00
		1394	00	03	90
		1395	00	02	20
		1622 / 4475	00	00	50
		1622 / 4476	00	00	20
		1396	00	04	30
		2352	00	00	20
		2359	00	04	30
		2361	00	03	80
		2364	00	00	20
		2362	00	00	70
		2363	00	02	90
		2377	00	48	80
		2378	00	02	00
		2379	00	00	70
		2381	00	01	80
		2382	00	02	70
		2383	00	01	80
		2411	00	01	90
		2384	00	00	20
		2410	00	04	60
		2403	00	04	20
		2402	00	01	80
		2401	00	01	40
		2400	00	01	10
		2399	00	02	40
		2394	00	00	20
		2395	00	03	90
		2396	00	02	20
		2397	00	00	70

1	2	3	4	5	6
2	आमड़ा – 112	803	00	04	10
		802	00	00	20
		804	00	03	60
		807	00	00	70
		806	00	01	20
		805	00	01	10
		808	00	03	70
		809	00	03	10
		811	00	03	80
		812	00	04	60
		813	00	03	90
		861	00	05	00
		864	00	02	20
		866	00	02	40
		1834	00	01	80
		1652	00	01	80
		1653	00	04	20
		1654	00	00	40
		1660	00	00	60
		1659	00	00	50
		1694	00	04	20
		1693	00	01	40
		1695	00	00	20
		1692	00	03	40
		1696	00	01	20
		1690	00	02	70
		1705	00	00	70
		1706	00	06	10
		1707	00	02	10
		1709	00	00	30
		1710	00	03	70
		1753	00	03	30
		1751	00	02	10
		1757	00	02	80
		1756	00	03	00
		1755	00	02	00
		229	00	01	50
		323	00	00	80
		320	00	01	40

1	2	3	4	5	6
	आमड़ा – 112	322	00	01	90
	जारी.....	321	00	01	30
		318	00	00	40
		317	00	05	00
		316	00	00	20
		315	00	03	00
		314	00	02	80
		311	00	00	80
		330/709	00	01	10
		330	00	03	70
		332	00	00	80
		331	00	01	50
		334	00	05	10
		333	00	00	20
		334/684	00	03	90
		285	00	00	20
		134	00	03	80
		133	00	00	40
		135	00	03	30
		130	00	00	50
		129	00	01	80
		110/1867	00	01	70
		110	00	02	30
		111/1868	00	01	10
		341	00	03	80
		344	00	03	30
		122	00	07	30
		123	00	00	80
		120	00	02	50
		119	00	01	90
		118	00	01	60
		116	00	01	80
3	जौग्राम – 114	1/889	00	01	50
		2	00	01	00
		3	00	00	70
		4/10109	00	09	00

1	2	3	4	5	6
जौग्राम – 114		5	00	04	90
जारी.....		6	00	05	10
		16	00	03	90
		10	00	00	20
		15	00	01	30
		12	00	03	90
		12/9632	00	02	40
		13	00	00	60
		244	00	01	00
		239	00	03	40
		238	00	01	40
		236	00	00	20
		234	00	01	10
		235	00	06	10
		229	00	03	50
		230	00	01	20
		223	00	02	30
		222	00	02	70
		221	00	04	40
		397	00	00	30
		196	00	00	60
		195	00	03	10
		194	00	01	10
		193	00	00	20
		184	00	03	70
		192	00	02	50
		185	00	01	00
		191	00	00	20
		190	00	02	00
		174	00	01	10
		164	00	02	50
		173	00	04	30
		166	00	01	90
		170	00	00	60
		169	00	03	20
		168	00	01	40
		1204	00	02	90
		1203	00	01	80
		1202	00	02	50

1	2	3	4	5	6
	जौग्राम – 114	1211	00	06	00
	जारी.....	1215	00	02	10
		1216	00	00	30
		1214	00	01	20
		1223	00	05	00
		1224	00	01	30
		1225	00	02	30
		1230	00	01	00
		1231	00	00	20
		1228	00	00	20
		1229	00	02	50
		1284	00	00	40
		1236	00	02	10
		1283	00	02	90
		1282	00	02	60
		1242	00	03	00
		1243	00	06	30
		1253	00	02	50
		1254	00	00	20
		1252	00	00	80
		1251	00	03	40
		1257	00	00	80
		1250	00	00	20
		1040	00	08	50
		1194	00	02	40
		1194/2266	00	00	50
		1067	00	01	50
		1068	00	01	60
		1069	00	02	70
		1110	00	00	40
		1070	00	02	10
		1072	00	00	20
		1071	00	04	00
		1066	00	04	70

1	2	3	4	5	6
	जौग्राम – 114	1066 / 2223	00	01	20
	जारी.....	1059 / 2222	00	00	20
		1059 / 2221	00	01	00
		5795	00	05	50
		5789	00	02	60
		5796	00	03	50
		5798	00	00	70
		5785	00	00	90
		5804	00	03	70
		5805	00	00	30
		5803	00	01	50
		5802	00	00	20
		5808	00	01	00
		5809	00	04	60
		5811	00	01	00
		5810	00	01	30
		5751	00	01	00
		5840	00	02	50
		5841	00	03	10
		586C	00	00	20
		5861	00	01	10
		5866	00	04	50
		5865	00	01	70
		5868	00	00	40
		5869	00	02	40
		5870	00	02	20
		5872	00	02	50
		5871	00	05	40
		5874	00	09	20
		5873	00	01	00
		5909	00	03	60
		5914	00	00	40
		5911	00	03	50
		5913	00	00	30

1	2	3	4	5	6
	जौग्राम – 114	5912	00	01	50
		5905	00	02	40
		5950	00	00	70
		6003	00	02	80
		6009	00	00	80
		6008	00	02	20
		6004	00	00	40
		6005	00	01	30
		6007	00	00	90
		5999	00	01	60
		6006	00	00	30
		6017	00	03	00
		6018	00	00	80
		6019	00	04	80
		6020	00	00	20
		5997	00	02	50
		5996	00	01	70
		6199	00	02	50
		6198	00	01	60
		6197	00	05	40
		6100	00	00	30
		6196	00	05	00
		6195	00	02	20
		6194	00	01	10
		6193	00	00	50
		6192	00	01	90
		6191	00	01	60
		6189	00	03	10
		6186	00	05	40
		6249	00	02	00
		6253	00	05	30
		6183	00	01	20
		6254	00	05	00
		6182	00	00	30

1	2	3	4	5	6
	जौग्राम – 114	6255	00	04	00
		6256	00	00	20
4	नबग्राम – 16	918	00	03	70
		919	00	03	70
		920	00	03	50
		927	00	00	20
		926	00	07	90
		928	00	05	30
		933	00	06	60
		934	00	08	60
		935	00	12	70
		936	00	00	80
		937	00	00	50
		945 / 1757	00	00	60
		1544	00	01	80
		1545	00	01	40
		1546	00	03	10
		1547	00	04	10
		1550	00	02	10
		1549	00	03	00
		1553	00	00	30
		1554	00	06	50
		1555	00	02	10
		1556	00	00	20
		1647	00	00	20
		1648	00	04	10
		1652	00	00	20
		1649	00	01	60
		1653	00	04	10
		1652 / 1803	00	01	10
		1650	00	00	60
		1636	00	06	40
		1702	00	05	60
		1634	00	08	00

1	2	3	4	5	6
	नबग्राम – 16 (जारी.....)	1635	00	00	20
5	आझापुर – 20	424 / 1379	00	09	90
		425	00	03	70
		428	00	02	20
		436	00	00	20
		447	00	01	50
		437	00	00	70
		446	00	01	00
		445	00	01	80
		444	00	01	90
		443	00	00	30
		442	00	04	00
		441	00	04	40
		440	00	02	70
		543	00	01	40
		439	00	01	20
		561	00	03	30
		560	00	01	20
		562	00	01	90
		563	00	02	20
		565	00	02	30
		572	00	03	00
		573 / 1439	00	02	40
		580	00	00	20
		571	00	00	20
		570	00	02	90
		627	00	03	50
		629	00	00	20
		632	00	00	20
		630	00	01	60
		628	00	01	20
		631	00	02	10
		564	00	00	20
		634	00	01	90

1	2	3	4	5	6
	आझापुर – 20	635	00	01	10
		673	00	00	20
		636	00	04	00
		638	00	01	50
		704	00	07	80
		697	00	02	70
		698	00	02	50
		696	00	04	70
		695	00	05	20
		674	00	01	40
		694	00	00	20
		690	00	03	20
		840	00	00	20
		691	00	01	50
		689	00	03	60
		686	00	02	50
		688	00	00	20
		687	00	04	20
		681	00	00	80
		683	00	05	20
		682	00	02	20
		2804	00	04	90
		2805	00	00	60
		2838	00	00	20
		2801	00	00	20
		2803	00	01	50
		2808	00	05	30
		2807	00	01	30
		2809	00	00	20
		2810	00	05	80
		2816	00	00	20
		2815	00	03	60
		2811	00	00	50
		2814	00	05	90
		2834	00	00	30

1	2	3	4	5	6
	आझापुर – 20	2835	00	02	60
		2837	00	03	20
		2838	00	00	20
		2841	00	04	30
		2840	00	03	90
		2844	00	01	00
		2877	00	00	20
		2869	00	08	00
		2870	00	00	20
		2871	00	01	10
		2872	00	05	00
		2873	00	03	90
		2903	00	00	80
		2892	00	01	10
		2893	00	06	40
		2902	00	01	50
		2894	00	01	10
		2901	00	05	70
		2900	00	01	10
		2897	00	04	70
		2899	00	02	20
		2898	00	04	90
		2912	00	00	80
		2913	00	03	40
		2914	00	13	40
		2926	00	05	20
		2927	00	00	20
		2929	00	10	50
		2930	00	01	80
		4720	00	02	50
		4721	00	02	20
		4719	00	03	20
		4718	00	02	80
		4715	00	00	20
		4717	00	00	20
		4716	00	02	50
		4728	00	01	70
		4750	00	02	70

1	2	3	4	5	6
	आझापुर – 20	4750 / 6485	00	04	10
		4751	00	00	20
		4749	00	07	90
		4748	00	00	70
		4747	00	01	30
		4742	00	00	40
		4743	00	02	80
		4741	00	01	50
		6451	00	01	10
		6452	00	00	20
		5247	00	30	70
		5248	00	00	20
		5249	00	00	70
		6472	00	01	00
		5261	00	04	30
		5283	00	00	20
		5282	00	01	70
		5281	00	00	20
		5286	00	01	00
		5280	00	01	00
		5279	00	01	40
		5273	00	01	00
		5288	00	03	70
		5270	00	05	10
		5264	00	01	30
		5269	00	02	50
		5265	00	05	30
		5266	00	04	50

[फा. सं. आर-25011/20/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 369.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto:

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S: JAMALPUR		DISTRICT : BURWAN	STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (R.S.)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	ABUJHATI - 111	1253/2512	00	01	10
		1319	00	00	20
		1321	00	09	10
		1327	00	06	00
		1323	00	03	00
		1326	00	00	20
		2494	00	01	70
		1324	00	07	90
		1366	00	02	20
		1367	00	06	90
		1369	00	00	60
		1368	00	05	40
		1370	00	01	00
		1385	00	03	00
		1383	00	03	60
		1382	00	01	20
		1382/4460	00	02	60
		1387	00	06	70
		1388	00	00	20
		1381	00	00	20
		1379/4459	00	05	90
		1393	00	04	20

1	2	3	4	5	6
	ABUJHATI - 111	1392	00	05	00
		1394	00	03	90
		1395	00	02	20
		1622/4475	00	00	50
		1622/4476	00	00	20
		1396	00	04	30
		2352	00	00	20
		2359	00	04	30
		2361	00	03	80
		2364	00	00	20
		2362	00	00	70
		2363	00	02	90
		2377	00	48	80
		2378	00	02	00
		2379	00	00	70
		2381	00	01	80
		2382	00	02	70
		2383	00	01	80
		2411	00	01	90
		2384	00	00	20
		2410	00	04	60
		2403	00	04	20
		2402	00	01	80
		2401	00	01	40
		2400	00	01	10
		2399	00	02	40
		2394	00	00	20
		2395	00	03	90
		2396	00	02	20
		2397	00	00	70
2	AMRA - 112	803	00	04	10
		802	00	00	20
		804	00	03	60
		807	00	00	70
		806	00	01	20
		805	00	01	10
		808	00	03	70
		809	00	03	10

1	2	3	4	5	6
	AMRA - 112	811	00	03	80
		812	00	04	60
		813	00	03	90
		861	00	05	00
		864	00	02	20
		866	00	02	40
		1834	00	01	80
		1652	00	01	80
		1653	00	04	20
		1654	00	00	40
		1660	00	00	60
		1659	00	00	50
		1694	00	04	20
		1693	00	01	40
		1695	00	00	20
		1692	00	03	40
		1696	00	01	20
		1690	00	02	70
		1705	00	00	70
		1706	00	06	10
		1707	00	02	10
		1709	00	00	30
		1710	00	03	70
		1753	00	03	30
		1751	00	02	10
		1757	00	02	80
		1756	00	03	00
		1755	00	02	00
		229	00	01	50
		323	00	00	80
		320	00	01	40
		322	00	01	90
		321	00	01	30
		318	00	00	40
		317	00	05	00
		316	00	00	20
		315	00	03	00
		314	00	02	80

1	2	3	4	5	6
	AMRA - 112	311	00	00	80
		330/709	00	01	10
		330	00	03	70
		332	00	00	80
		331	00	01	50
		334	00	05	10
		333	00	00	20
		334/684	00	03	90
		285	00	00	20
		134	00	03	80
		133	00	00	40
		135	00	03	30
		130	00	00	50
		129	00	01	80
		110/1867	00	01	70
		110	00	02	30
		111/1868	00	01	10
		341	00	03	80
		344	00	03	30
		122	00	07	30
		123	00	00	80
		120	00	02	50
		119	00	01	90
		118	00	01	60
		116	00	01	80
3	JAUGRAM - 114	1/889	00	01	50
		2	00	01	00
		3	00	00	70
		4/10109	00	09	00
		5	00	04	90
		6	00	05	10
		16	00	03	90
		10	00	00	20
		15	00	01	30

1	2	3	4	5	6
	JAUGRAM - 114	12	00	03	90
		12/9632	00	02	40
		13	00	00	60
		244	00	01	00
		239	00	03	40
		238	00	01	40
		236	00	00	20
		234	00	01	10
		235	00	06	10
		229	00	03	50
		230	00	01	20
		223	00	02	30
		222	00	02	70
		221	00	04	40
		397	00	00	30
		196	00	00	60
		195	00	03	10
		194	00	01	10
		193	00	00	20
		184	00	03	70
		192	00	02	50
		185	00	01	00
		191	00	00	20
		190	00	02	00
		174	00	01	10
		164	00	02	50
		173	00	04	30
		166	00	01	90
		170	00	00	60
		169	00	03	20
		168	00	01	40
		1204	00	02	90
		1203	00	01	80
		1202	00	02	50

1	2	3	4	5	6
	JAUGRAM - 114	1211	00	06	00
		1215	00	02	10
		1216	00	00	30
		1214	00	01	20
		1223	00	05	00
		1224	00	01	30
		1225	00	02	30
		1230	00	01	00
		1231	00	00	20
		1228	00	00	20
		1229	00	02	50
		1284	00	00	40
		1236	00	02	10
		1283	00	02	90
		1282	00	02	60
		1242	00	03	00
		1243	00	06	30
		1253	00	02	50
		1254	00	00	20
		1252	00	00	80
		1251	00	03	40
		1257	00	00	80
		1250	00	00	20
		1040	00	08	50
		1194	00	02	40
		1194/2266	00	00	50
		1067	00	01	50
		1068	00	01	60
		1069	00	02	70
		1110	00	00	40
		1070	00	02	10
		1072	00	00	20
		1071	00	04	00
		1066	00	04	70

1	2	3	4	5	6
	JAUGRAM - 114	1066/2223	00	01	20
		1059/2222	00	00	20
		1059/2221	00	01	00
		5795	00	05	50
		5789	00	02	60
		5796	00	03	50
		5798	00	00	70
		5785	00	00	90
		5804	00	03	70
		5805	00	00	30
		5803	00	01	50
		5802	00	00	20
		5808	00	01	00
		5809	00	04	60
		5811	00	01	00
		5810	00	01	30
		5751	00	01	00
		5840	00	02	50
		5841	00	03	10
		5860	00	00	20
		5861	00	01	10
		5866	00	04	50
		5865	00	01	70
		5868	00	00	40
		5869	00	02	40
		5870	00	02	20
		5872	00	02	50
		5871	00	05	40
		5874	00	09	20
		5873	00	01	00
		5909	00	03	60
		5914	00	00	40
		5911	00	03	50
		5913	00	00	30

1	2	3	4	5	6
	JAUGRAM - 114	5912	00	01	50
		5905	00	02	40
		5950	00	00	70
		6003	00	02	80
		6009	00	00	80
		6008	00	02	20
		6004	00	00	40
		6005	00	01	30
		6007	00	00	90
		5999	00	01	60
		6006	00	00	30
		6017	00	03	00
		6018	00	00	80
		6019	00	04	80
		6020	00	00	20
		5997	00	02	50
		5996	00	01	70
		6199	00	02	50
		6198	00	01	60
		6197	00	05	40
		6100	00	00	30
		6196	00	05	00
		6195	00	02	20
		6194	00	01	10
		6193	00	00	50
		6192	00	01	90
		6191	00	01	60
		6189	00	03	10
		6186	00	05	40
		6249	00	02	00
		6253	00	05	30
		6183	00	01	20
		6254	00	05	00
		6182	00	00	30

1	2	3	4	5	6
	JAUGRAM - 114	6255	00	04	00
		6256	00	00	20
4	NABAGRAM - 16	918	00	03	70
		919	00	03	70
		920	00	03	50
		927	00	00	20
		926	00	07	90
		928	00	05	30
		933	00	06	60
		934	00	08	60
		935	00	12	70
		936	00	00	80
		937	00	00	50
		945/1757	00	00	60
		1544	00	01	80
		1545	00	01	40
		1546	00	03	10
		1547	00	04	10
		1550	00	02	10
		1549	00	03	00
		1553	00	00	30
		1554	00	06	50
		1555	00	02	10
		1556	00	00	20
		1647	00	00	20
		1648	00	04	10
		1652	00	00	20
		1649	00	01	60
		1653	00	04	10
		1652/1803	00	01	10
		1650	00	00	60
		1636	00	06	40
		1702	00	05	60
		1634	00	08	00

1	2	3	4	5	6
	NABAGRAM - 16 (Contd...)	1635	00	00	20
5	AJHAPUR - 20	424/1379	00	09	90
		425	00	03	70
		428	00	02	20
		436	00	00	20
		447	00	01	50
		437	00	00	70
		446	00	01	00
		445	00	01	80
		444	00	01	90
		443	00	00	30
		442	00	04	00
		441	00	04	40
		440	00	02	70
		543	00	01	40
		439	00	01	20
		561	00	03	30
		560	00	01	20
		562	00	01	90
		563	00	02	20
		565	00	02	30
		572	00	03	00
		573/1439	00	02	40
		580	00	00	20
		571	00	00	20
		570	00	02	90
		627	00	03	50
		629	00	00	20
		632	00	00	20
		630	00	01	60
		628	00	01	20
		631	00	02	10
		564	00	00	20
		634	00	01	90

1	2	3	4	5	6
	AJHAPUR - 20	635	00	01	10
		673	00	00	20
		636	00	04	00
		638	00	01	50
		704	00	07	80
		697	00	02	70
		698	00	02	50
		696	00	04	70
		695	00	05	20
		674	00	01	40
		694	00	00	20
		690	00	03	20
		840	00	00	20
		691	00	01	50
		689	00	03	60
		686	00	02	50
		688	00	00	20
		687	00	04	20
		681	00	00	80
		683	00	05	20
		682	00	02	20
		2804	00	04	90
		2805	00	00	60
		2838	00	00	20
		2801	00	00	20
		2803	00	01	50
		2808	00	05	30
		2807	00	01	30
		2809	00	00	20
		2810	00	05	80
		2816	00	00	20
		2815	00	03	60
		2811	00	00	50
		2814	00	05	90
		2834	00	00	30

1	2	3	4	5	6
	AJHAPUR - 20	2835	00	02	60
		2837	00	03	20
		2838	00	00	20
		2841	00	04	30
		2840	00	03	90
		2844	00	01	00
		2877	00	00	20
		2869	00	08	00
		2870	00	00	20
		2871	00	01	10
		2872	00	05	00
		2873	00	03	90
		2903	00	00	80
		2892	00	01	10
		2893	00	06	40
		2902	00	01	50
		2894	00	01	10
		2901	00	05	70
		2900	00	01	10
		2897	00	04	70
		2899	00	02	20
		2898	00	04	90
		2912	00	00	80
		2913	00	03	40
		2914	00	13	40
		2926	00	05	20
		2927	00	00	20
		2929	00	10	50
		2930	00	01	80
		4720	00	02	50
		4721	00	02	20
		4719	00	03	20
		4718	00	02	80
		4715	00	00	20
		4717	00	00	20
		4716	00	02	50
		4728	00	01	70
		4750	00	02	70

1	2	3	4	5	6
	AJHAPUR - 20	4750/6485	00	04	10
		4751	00	00	20
		4749	00	07	90
		4748	00	00	70
		4747	00	01	30
		4742	00	00	40
		4743	00	02	80
		4741	00	01	50
		6451	00	01	10
		6452	00	00	20
		5247	00	30	70
		5248	00	00	20
		5249	00	00	70
		6472	00	01	00
		5261	00	04	30
		5283	00	00	20
		5282	00	01	70
		5281	00	00	20
		5286	00	01	00
		5280	00	01	00
		5279	00	01	40
		5273	00	01	00
		5288	00	03	70
		5270	00	05	10
		5264	00	01	30
		5269	00	02	50
		5265	00	05	30
		5266	00	04	50

नई दिल्ली, 31 जनवरी, 2013

का.आ. 304.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप — हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : जामालपुर		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (एल.आर.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	शिरोमणि – 110	53	00	03	50
		54	00	03	00
		55	00	07	60
		81	00	06	40
		83	00	05	70
		82	00	00	20
		84	00	05	80
		85	00	00	20
		95	00	04	00
		96	00	05	50
		94	00	00	20
		97	00	03	90
		98	00	04	80
		112	00	04	30
		111	00	00	40
		110	00	01	00
		109	00	01	40
		113	00	03	50
		115	00	03	50
		114	00	00	20
		116/715	00	01	40
		117	00	03	20
		118	00	04	60
		120	00	04	90
		126	00	00	20
		121	00	06	70
		122	00	00	20
		138	00	00	90
		144	00	03	70
		145	00	01	70

1	2	3	4	5	6
	शिरोमणि – 110	146	00	04	10
	जारी.....	142	00	00	50
		147	00	08	00
		149	00	01	30
		150	00	04	20
		153	00	03	90
		163	00	01	90
		162	00	00	20
		164	00	01	80
		167	00	02	50
		168	00	01	70
2	पाँचशिमूल – 107	20	00	01	50
		17	00	01	90
		17 / 1296	00	03	00
		23	00	01	30
		24	00	00	40
		25	00	02	00
		26	00	01	70
		27	00	00	20
		28	00	02	60
		69	00	01	20
		68	00	00	70
		67	00	04	00
		66	00	00	70
		66 / 1290	00	01	40
		65	00	02	80
		64	00	06	00
		61	00	04	30
		101	00	09	90
		144	00	05	20
		143	00	06	80
		123	00	00	40
		125	00	02	60
		124	00	03	40

1	2	3	4	5	6
	पॉचशिमूल – 107	121	00	01	40
		163	00	00	30
		164	00	07	20
		166	00	00	20
		167	00	00	40
		120	00	00	20
		168	00	09	20
		199	00	01	50
		189	00	07	30
		193	00	00	70
		190	00	09	50
		185	00	01	60
		191	00	01	00
		184	00	06	50
		183	00	02	80
		956	00	02	20
		955	00	10	00
		969	00	00	20
		971	00	00	20
		958	00	06	60
		957	00	02	70
		967	00	01	10
3	आस्ताइ – 106	1176	00	01	90
		1175	00	00	60
		1177	00	02	00
		1180	00	04	50
		1181	00	02	60
		1182	00	02	80
		1183	00	00	60
		1187	00	01	60
		1186	00	00	20
		1185	00	03	60
		1184	00	04	50
		1179	00	01	80

1	2	3	4	5	6
4	जाजानपुर – 115	310	00	00	40
		309	00	05	20
		304	00	00	70
		305	00	02	90
		301	00	00	20
		300	00	00	90
		299	00	02	30
5	दत्तपुर – 23	705	00	00	70
		777	00	10	00
		675	00	00	70
		778	00	00	30
		776	00	09	20
		779	00	05	70
		788	00	11	70
		769	00	01	90
		789	00	06	00
		840	00	02	00
		841	00	01	70
		842	00	00	60
		837	00	02	50
		846	00	00	20
		836	00	05	90
		848	00	01	20
		851	00	04	00
		852	00	05	60
		914	00	03	10
		915	00	00	20
		911	00	05	10
		910	00	00	20
		905	00	00	60
		882	00	06	20
		901	00	01	40
		884	00	02	40
		899	00	01	20

1	2	3	4	5	6
	दत्तपुर – 23	888	00	04	30
		889	00	03	00
		890	00	02	60
		891	00	01	10
		530	00	02	50
		531	00	00	20
		418	00	01	70
		419	00	04	20
		420	00	00	20
		417	00	01	10
		415	00	01	40
		406	00	03	20
		414	00	00	50
		413	00	01	10
		412	00	07	40
		424	00	00	20
		411	00	05	00
		425	00	00	20
		426	00	02	60
		428	00	06	00
		429	00	04	40
		430	00	03	30
		431	00	00	20
6	पूर्ब्बसादिपुर – 21	153	00	00	70
		154	00	05	90
		152/870	00	00	40
		155	00	09	10
		152	00	00	40
		148	00	00	20
		147	00	06	40
		142	00	03	10
		144	00	00	30
		143	00	03	60
		225	00	02	00

1	2	3	4	5	6
	पूर्ब्बसादिपुर – 21	224	00	00	20
		226	00	03	80
		227	00	01	90
		242	00	01	00
		243	00	02	00
		237	00	02	50
		297	00	01	80
		236	00	00	20
		298	00	04	10
		299	00	03	30
		299 / 884	00	00	30
		300	00	01	60
		301	00	02	20
		302	00	02	50
		325	00	01	80
		324	00	01	60
		323	00	00	60
		321	00	02	30
		322	00	00	20
		366	00	01	40
		367	00	00	60
		317	00	01	10
		368	00	01	60
		369	00	00	50
		318	00	00	20
		319	00	00	20
		370	00	01	40
		371	00	00	80
		794	00	03	10
		795	00	04	40
		800	00	01	60
		797	00	00	30
		798	00	09	10
		799	00	00	70

1	2	3	4	5	6
	पूर्ब्बसादिपुर – 21	811	00	00	60
		803	00	00	20
		801	00	00	20
		805	00	02	30
		804	00	05	20
		806	00	05	10

[फा. सं. आर-25011/20/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 304.— Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S: JAMALPUR		DISTRICT : BURWAN	STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (L.R)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	SIROMANI - 110	53	00	03	50
		54	00	03	00
		55	00	07	60
		81	00	06	40
		83	00	05	70
		82	00	00	20
		84	00	05	80
		85	00	00	20
		95	00	04	00
		96	00	05	50
		94	00	00	20
		97	00	03	90
		98	00	04	80
		112	00	04	30
		111	00	00	40
		110	00	01	00
		109	00	01	40
		113	00	03	50
		115	00	03	50
		114	00	00	20
		116/715	00	01	40
		117	00	03	20
		118	00	04	60
		120	00	04	90
		126	00	00	20
		121	00	06	70
		122	00	00	20
		138	00	00	90
		144	00	03	70
		145	00	01	70

1	2	3	4	5	6
	SIROMANI - 110	146	00	04	10
		142	00	00	50
		147	00	08	00
		149	00	01	30
		150	00	04	20
		153	00	03	90
		163	00	01	90
		162	00	00	20
		164	00	01	80
		167	00	02	50
		168	00	01	70
2	PANCHSIMUL - 107	20	00	01	50
		17	00	01	90
		17/1296	00	03	00
		23	00	01	30
		24	00	00	40
		25	00	02	00
		26	00	01	70
		27	00	00	20
		28	00	02	60
		69	00	01	20
		68	00	00	70
		67	00	04	00
		66	00	00	70
		66/1290	00	01	40
		65	00	02	80
		64	00	06	00
		61	00	04	30
		101	00	09	90
		144	00	05	20
		143	00	06	80
		123	00	00	40
		125	00	02	60
		124	00	03	40

1	2	3	4	5	6
	PANCHSIMUL - 107	121	00	01	40
		163	00	00	30
		164	00	07	20
		166	00	00	20
		167	00	00	40
		120	00	00	20
		168	00	09	20
		199	00	01	50
		189	00	07	30
		193	00	00	70
		190	00	09	50
		185	00	01	60
		191	00	01	00
		184	00	06	50
		183	00	02	80
		956	00	02	20
		955	00	10	00
		969	00	00	20
		971	00	00	20
		958	00	06	60
		957	00	02	70
		967	00	01	10
3	ASTAI - 106	1176	00	01	90
		1175	00	00	60
		1177	00	02	00
		1180	00	04	50
		1181	00	02	60
		1182	00	02	80
		1183	00	00	60
		1187	00	01	60
		1186	00	00	20
		1185	00	03	60
		1184	00	04	50
		1179	00	01	80

1	2	3	4	5	6
4	JAJANPUR - 115	310	00	00	40
		309	00	05	20
		304	00	00	70
		305	00	02	90
		301	00	00	20
		300	00	00	90
		299	00	02	30
5	DATTAPUR - 23	705	00	00	70
		777	00	10	00
		675	00	00	70
		778	00	00	30
		776	00	09	20
		779	00	05	70
		788	00	11	70
		769	00	01	90
		789	00	06	00
		840	00	02	00
		841	00	01	70
		842	00	00	60
		837	00	02	50
		846	00	00	20
		836	00	05	90
		848	00	01	20
		851	00	04	00
		852	00	05	60
		914	00	03	10
		915	00	00	20
		911	00	05	10
		910	00	00	20
		905	00	00	60
		882	00	06	20
		901	00	01	40
		884	00	02	40
		899	00	01	20

1	2	3	4	5	6
	DATTAPUR - 23	888	00	04	30
		889	00	03	00
		890	00	02	60
		891	00	01	10
		530	00	02	50
		531	00	00	20
		418	00	01	70
		419	00	04	20
		420	00	00	20
		417	00	01	10
		415	00	01	40
		406	00	03	20
		414	00	00	50
		413	00	01	10
		412	00	07	40
		424	00	00	20
		411	00	05	00
		425	00	00	20
		426	00	02	60
		428	00	06	00
		429	00	04	40
		430	00	03	30
		431	00	00	20
6	PURBBASADIPUR - 21	153	00	00	70
		154	00	05	90
		152/870	00	00	40
		155	00	09	10
		152	00	00	40
		148	00	00	20
		147	00	06	40
		142	00	03	10
		144	00	00	30
		143	00	03	60
		225	00	02	00

1	2	3	4	5	6
	PURBBASADIPUR - 21	224	00	00	20
		226	00	03	80
		227	00	01	90
		242	00	01	00
		243	00	02	00
		237	00	02	50
		297	00	01	80
		236	00	00	20
		298	00	04	10
		299	00	03	30
		299/884	00	00	30
		300	00	01	60
		301	00	02	20
		302	00	02	50
		325	00	01	80
		324	00	01	60
		323	00	00	60
		321	00	02	30
		322	00	00	20
		366	00	01	40
		367	00	00	60
		317	00	01	10
		368	00	01	60
		369	00	00	50
		318	00	00	20
		319	00	00	20
		370	00	01	40
		371	00	00	80
		794	00	03	10
		795	00	04	40
		800	00	01	60
		797	00	00	30
		798	00	09	10
		799	00	00	70

1	2	3	4	5	6
	PURBBASADIPUR - 21	811	00	00	60
		803	00	00	20
		801	00	00	20
		805	00	02	30
		804	00	05	20
		806	00	05	10

[F. No. R-25011/20/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 305.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : बूद बूद		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (एल.आर.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	भगबानपुर – 36	1	00	07	70
		2	00	01	90
		3	00	06	20
		4	00	01	80
		5	00	01	50
		7	00	03	70
		128	00	00	20
		131	00	00	20
		127	00	04	50
		137	00	01	10
		138	00	03	60
		139	00	02	20
		142	00	02	10
		143	00	05	50
		119	00	00	20
		117	00	00	80
		116	00	04	60
		191	00	05	10
		175	00	03	90
		189	00	01	60
		183	00	01	70
		181	00	02	50
		180	00	01	20
		179	00	01	30
		185	00	00	20
		297	00	03	00
		298	00	01	70
		294	00	00	50
		293	00	01	20
		292	00	03	40

1	2	3	4	5	6
	भगबानपुर – 36	366	00	02	70
		398	00	04	80
		380	00	03	40
		397	00	00	20
		395	00	07	90
		389	00	01	40
		390	00	01	00
		392	00	00	40
		393	00	04	80
		333	00	03	00
		332	00	12	00
		455	00	16	40
		456	00	03	90
		477	00	04	40
		476	00	03	70
		489	00	06	10
		474	00	00	20
		475	00	00	40
		492	00	00	20
		490	00	01	80
		491	00	04	70
		550	00	08	00
		549	00	02	60
		539	00	03	30
		540	00	05	60
		541	00	02	40
		542	00	02	10
		538	00	01	00
2	माड़ो – 32	4801	00	00	50
		4854	00	07	30
		4852	00	00	20
		4851	00	01	20
		4858	00	03	20
		4860	00	00	70

1	2	3	4	5	6
	माड़ो – 32	5509	00	02	40
		5510	00	03	40
		5511	00	00	20
		5575	00	03	40
		5576	00	02	10
		5577	00	01	70
		5573	00	02	50
		5582	00	05	60
		5606	00	03	50
		5605	00	03	10
		5582 / 6851	00	00	40
		5594 / 6853	00	04	20
		5602	00	02	10
		5599	00	00	90
		5600	00	02	60
		5598 / 6854	00	00	30
		5594 / 6868	00	02	70
		5924	00	02	00
		5597	00	02	00
		5929	00	02	80
		6604	00	01	60
		6605	00	04	60
		5928	00	05	70
		5928 / 6608	00	00	20
		5931	00	00	20
		6110	00	03	70
		5980	00	02	10
		6108	00	01	90
		5985	00	02	40
		6107	00	00	50
		5984 / 6619	00	03	50
		5986	00	00	60
		6101	00	00	50
		6001	00	02	20

1	2	3	4	5	6
	साड़ी -- 32	6002	00	04	30
		6003	00	02	50
		6004	00	04	60
		6097 / 6633	00	02	50
		6097 / 6638	00	02	10
		6085	00	03	70
		6086	00	03	40
		6083	00	03	00
		6082	00	03	50
		6081	00	02	70
		6080	00	02	50
		6077	00	03	60
		6076	00	04	30
		6072	00	03	40
		6073	00	03	20
		1784	00	01	50
		1783	00	00	20
		1785	00	02	40
		1787	00	08	90
		1764 / 2577	00	10	50
		1763	00	02	40
		1762	00	00	20
		1757	00	03	10
		1756	00	00	20
		1755	00	00	20
		1754	00	03	80
		1752	00	00	70
		1753	00	01	20
		1750	00	01	80
		1746	00	01	50
		1745	00	01	10
		1747 / 2575	00	03	20
		1705	00	00	40
		1710	00	01	70

1	2	3	4	5	6
	माड़ो – 32	1706	00	02	20
		1708	00	03	00
		1712	00	01	70
		1713	00	01	20
		1538	00	02	00
		1532	00	00	50
		1531	00	02	50
		1494	00	01	90
		1528	00	01	00
		1508	00	02	30
		1507	00	00	40
		1506	00	01	30
		1505	00	00	50
		1500	00	00	20
		1503	00	01	40
		1501	00	03	80
		1504	00	02	10
		1502	00	00	90
		2073	00	00	80
		2074	00	02	40
		2075	00	00	20
		2077	00	01	60
		1488	00	02	10
		2078	00	00	40
		2079	00	01	90
		2080	00	00	90
		2081	00	00	50
		1482	00	01	80
		1480	00	00	40
		2082	00	02	10
		6827	00	00	40
		2072	00	00	20
		1471	00	00	90
		1472	00	01	40

1	2	3	4	5	6
	माड़ो – 32	1479/6716	00	00	20
		1470	00	02	40
		1464/6815	00	02	20
		1469	00	19	40
		2236	00	04	30
		2236/2558	00	02	40
		2241	00	02	10
		2242	00	01	40
		1469/6806	00	08	80

[फा. सं. आर-25011/18/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 305.— Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S : BUD BUD	DISTRICT : BURDWAN		STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (L.R)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	BHAGABANPUR - 36	1	00	07	70
		2	00	01	90
		3	00	06	20
		4	00	01	80
		5	00	01	50
		7	00	03	70
		128	00	00	20
		131	00	00	20
		127	00	04	50
		137	00	01	10
		138	00	03	60
		139	00	02	20
		142	00	02	10
		143	00	05	50
		119	00	00	20
		117	00	00	80
		116	00	04	60
		191	00	05	10
		175	00	03	90
		189	00	01	60
		183	00	01	70
		181	00	02	50
		180	00	01	20
		179	00	01	30
		185	00	00	20
		297	00	03	00
		298	00	01	70
		294	00	00	50
		293	00	01	20
		292	00	03	40

1	2	3	4	5	6
	BHAGABANPUR - 36	366	00	02	70
		398	00	04	80
		380	00	03	40
		397	00	00	20
		395	00	07	90
		389	00	01	40
		390	00	01	00
		392	00	00	40
		393	00	04	80
		333	00	03	00
		332	00	12	00
		455	00	16	40
		456	00	03	90
		477	00	04	40
		476	00	03	70
		489	00	06	10
		474	00	00	20
		475	00	00	40
		492	00	00	20
		490	00	01	80
		491	00	04	70
		550	00	08	00
		549	00	02	60
		539	00	03	30
		540	00	05	60
		541	00	02	40
		542	00	02	10
		538	00	01	00
2	MARO - 32	4801	00	00	50
		4854	00	07	30
		4852	00	00	20
		4851	00	01	20
		4858	00	03	20
		4860	00	00	70

1	2	3	4	5	6
	MARO - 32	5509	00	02	40
		5510	00	03	40
		5511	00	00	20
		5575	00	03	40
		5576	00	02	10
		5577	00	01	70
		5573	00	02	50
		5582	00	05	60
		5606	00	03	50
		5605	00	03	10
		5582/6851	00	00	40
		5594/6853	00	04	20
		5602	00	02	10
		5599	00	00	90
		5600	00	02	60
		5598/6854	00	00	30
		5594/6868	00	02	70
		5924	00	02	00
		5597	00	02	00
		5929	00	02	80
		6604	00	01	60
		6605	00	04	60
		5928	00	05	70
		5928/6608	00	00	20
		5931	00	00	20
		6110	00	03	70
		5980	00	02	10
		6108	00	01	90
		5985	00	02	40
		6107	00	00	50
		5984/6619	00	03	50
		5986	00	03	60
		6101	00	00	50
		6001	00	02	20

1	2	3	4	5	6
	MARO - 32	6002	00	04	30
		6003	00	02	50
		6004	00	04	60
		6097/6633	00	02	50
		6097/6638	00	02	10
		6085	00	03	70
		6086	00	03	40
		6083	00	03	00
		6082	00	03	50
		6081	00	02	70
		6080	00	02	50
		6077	00	03	60
		6076	00	04	30
		6072	00	03	40
		6073	00	03	20
		1784	00	01	50
		1783	00	00	20
		1785	00	02	40
		1787	00	08	90
		1764/2577	00	10	50
		1763	00	02	40
		1762	00	00	20
		1757	00	03	10
		1756	00	00	20
		1755	00	00	20
		1754	00	03	80
		1752	00	00	70
		1753	00	01	20
		1750	00	01	80
		1746	00	01	50
		1745	00	01	10
		1747/2575	00	03	20
		1705	00	00	40
		1710	00	01	70

1	2	3	4	5	6
	MARO - 32	1706	00	02	20
		1708	00	03	00
		1712	00	01	70
		1713	00	01	20
		1538	00	02	00
		1532	00	00	50
		1531	00	02	50
		1494	00	01	90
		1528	00	01	00
		1508	00	02	30
		1507	00	00	40
		1506	00	01	30
		1505	00	00	50
		1500	00	00	20
		1503	00	01	40
		1501	00	03	80
		1504	00	02	10
		1502	00	00	90
		2073	00	00	80
		2074	00	02	40
		2075	00	00	20
		2077	00	01	60
		1488	00	02	10
		2078	00	00	40
		2079	00	01	90
		2080	00	00	90
		2081	00	00	50
		1482	00	01	80
		1480	00	00	40
		2082	00	02	10
		6827	00	00	40
		2072	00	00	20
		1471	00	00	90
		1472	00	01	40

1	2	3	4	5	6
	MARO - 32	1479/6716	00	00	20
		1470	00	02	40
		1464/6815	00	02	20
		1469	00	19	40
		2236	00	04	30
		2236/2558	00	02	40
		2241	00	02	10
		2242	00	01	40
		1469/6806	00	08	80

[F. No. R-25011/18/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 306.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : बूद बूद		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	शुकडाल – 37	140/929	00	03	70
		140	00	09	70
		140/928	00	00	80
		143	00	00	70
2	मानकर – 34	8058	00	00	80
		8053/9311	00	01	60
		8053	00	06	00
		8054	00	06	40
		8052	00	00	40
		8047	00	06	80
		8044	00	04	90
		8043	00	06	20
		8167	00	02	10
		8163	00	04	30
		8164	00	03	40
		8362	00	00	20
		8272	00	03	30
		8275	00	01	80
		8274	00	03	00
		8276	00	02	90
		8278	00	02	90
		8279	00	03	30
		8280	00	03	80
		8288	00	04	30
		8288/9315	00	04	60
		8287	00	03	00
		8373	00	03	90
		8372	00	00	80
		8369	00	11	70
		8345	00	04	50

1	2	3	4	5	6
	मानकर – 34	8364	00	04	20
		8362	00	02	40
		8361	00	00	30
		8583	00	02	60
		8589	00	00	20
		8585	00	00	70
		8586	00	02	70
		8593	00	00	20
		8592	00	02	00
		8592 / 9328	00	01	70
		8610	00	01	90
		8611	00	00	20
		8612	00	01	90
		8610 / 9330	00	02	50
		8613	00	00	50
		8615	00	03	80
		8617	00	01	00
		8618	00	06	50
		8619	00	01	40
		8620	00	03	90
		8352	00	01	50
		8536	00	03	20
		8622	00	05	10
3	राइपुर – 33	4169	00	07	40
		4165	00	04	50
		4172 / 5421	00	01	60
		3164 / 5420	00	02	10
		4164	00	02	10
		4160	00	00	20
		4161	00	03	60
		4158	00	03	10
		4157	00	02	10
		4154	00	04	80
		5444	00	03	70

1	2	3	4	5	6
	राइपुर – 33	4155 / 5418	00	00	30
		4155	00	00	50
		4154 / 5417	00	01	10
		4229 / 5446	00	06	40
		4228 / 5445	00	00	60
		4229	00	05	60
		4230	00	08	50
		4231	00	00	60
		4138 / 5397	00	00	20
		4230 / 5447	00	00	70
		4230 / 4448	00	00	20
		4138 / 5396	00	00	40
		4139 / 5398	00	00	30
		4232	00	08	10
		4246	00	06	00
		4245	00	01	20
		4248	00	04	50
		4242	00	02	20
		4244	00	00	30
		4248 / 5321	00	07	20
		4822	00	05	60
		4823	00	00	20
		4826	00	08	00
		4827	00	01	20
		4830	00	08	00
		4833 / 5278	00	00	20
		4842	00	01	10
		4990	00	01	20
		4858	00	01	30
		4857	00	06	60
		4856	00	02	20
		4855	00	05	20
		4854	00	02	30
		4852	00	01	80

1	2	3	4	5	6
	राइपुर – 33	4848	00	00	60
		4849	00	02	10
		4850	00	00	30
		4851	00	13	30
		4936	00	03	20
		4939	00	03	00
		4935	00	00	60
		4934	00	01	00
		4941	00	01	40
		4933	00	01	70
		4942	00	02	60
		4943	00	04	80
		4944	00	02	80
		4945	00	09	00
4	कोटाचण्डीपुर – 29	1754	00	00	50
		1753	00	01	60
		1752	00	00	90
		1751	00	03	80
		1766	00	00	80
		1767	00	04	00
		1768	00	03	50
		1769	00	04	60
		1770	00	00	70
		1771	00	04	90
		1772	00	02	80
		1808	00	02	90
		1810	00	06	00
		1812	00	03	20
		1814	00	08	30
		1815	00	03	60
		1816	00	03	20
		1817	00	03	00
		1819	00	03	10
		1818	00	00	40

1	2	3	4	5	6
	कोटाचण्डीपुर – 29	1839	00	03	00
		1840	00	06	50
		1849	00	04	30
		1848	00	01	60
		1850	00	00	20
		1847	00	00	80
		1846	00	03	00
		1844	00	02	70
		1880 / 2403	00	01	30
		1879	00	00	60
		1880 / 2402	00	01	40
		1878 / 6281	00	00	90
		1878	00	02	10
		1891	00	06	00
		1890	00	04	40
		2000	00	65	50
		1613	00	10	10
		5780	01	97	60
		5463	00	00	30
		5707	00	00	20
		5708	00	02	10
		5710	00	02	80
		5711	00	11	40
		5721	00	04	80
		5727	00	02	50
		5753	00	02	60
		5752	00	10	70
		5741	00	08	60
		5742	00	01	00
		5850	00	00	40
5	धरला – 22	318	00	02	70
		323	00	09	20
		322	00	01	90
		324	00	03	50

1	2	3	4	5	6
6	पोण्डाली – 21	2771	00	02	80
		2770	00	02	60
		2769	00	02	70
		2765	00	01	60
		2764	00	00	20
		2778	00	05	10
		2779	00	00	80
		2777	00	05	00
		2781	00	03	00
		2782	00	00	20
		2786	00	04	70
		2785	00	08	40
		2893 / 3626	00	00	60
		2827	00	00	50
		2891	00	00	20
		2890	00	04	40
		2876	00	01	70
		2877	00	00	20
		2872	00	01	90
		2871	00	01	60
		2870	00	04	30
		2862	00	00	20
		2868	00	06	90
		2881	00	00	20
		2865	00	02	70
		2867	00	00	20
		2853	00	09	10
		2863	00	04	40
		2855	00	03	90
		3042	00	05	30
		3033	00	01	30
		3034	00	04	70
		3040	00	07	10
		3093	00	00	20

1	2	3	4	5	6
	पोण्डाली – 21	3095	00	00	20
		3094	00	05	60
		3090	00	04	20
		3086	00	01	20
		3068	00	00	30
		3085	00	02	00
		3084	00	03	00
		3083	00	01	40
		3082	00	02	40
		3081	00	02	40
		3080	00	00	20
		3079	00	06	20
		3450	00	05	90
		3562	00	01	40
		3563	00	02	20
		3564	00	01	70
		3578	00	05	60
		3627	00	03	00
		3591	00	00	60
		3590	00	03	60
		3589	00	01	90
		3588	00	04	30
		3596	00	00	20
		3597	00	02	00
		3579	00	03	00
		3586	00	00	40
		3587	00	01	90
		3584	00	00	20
		3598	00	04	20
		3599	00	01	30
		3619	00	04	40
		1141	00	00	30
		1142	00	01	90
		1146	00	03	90

1	2	3	4	5	6
	पोण्डाली – 21	1147	00	00	90
		1151	00	01	70
		1111	00	01	20
		1112	00	01	40
		1136	00	00	20
		1125	00	03	60
		1122	00	00	70
		1124	00	02	90
		1123	00	02	90
		1120	00	01	90
		1121	00	00	20
		1119	00	02	40
		1118	00	01	90
		1113	00	01	60
7	सोंयाइ – 6	1555	00	02	10
		1556	00	04	80
		1554	00	00	20
		1572	00	02	00
		1557	00	00	20
		1571	00	04	50
		1573	00	06	30
		1645	00	01	00
		1644	00	04	70
		1648	00	03	20
		1647	00	02	50
		1652	00	00	50
		1691	00	00	40
		1650	00	02	40
		1651	00	05	50
		1666	00	02	50
		1665	00	06	90
		1664	00	01	40
		2034	00	01	00
		2041	00	03	40

1	2	3	4	5	6
	सोंयाइ – 6	2037	00	00	20
		2047	00	04	50
		2042	00	00	20
		2046	00	00	50
		2073	00	03	20
		2074	00	03	20
		2072	00	00	20
		2075	00	02	00
		2081	00	01	10
		2077	00	02	40
		2079	00	02	20
		2080	00	00	20
		2078	00	00	90
		2082	00	01	40
		2083	00	04	30
		2350	00	01	80
		2358	00	00	20
		2350 / 2507	00	00	20
		2357	00	01	20
		2356	00	02	40
		2355	00	00	20
		2419	00	05	40
		2418	00	04	10
		2417	00	01	80
		2416	00	02	10
		2421	00	03	50
		2460	00	02	50
		2461	00	01	20
		2426	00	00	20
		2459	00	06	80
		2458	00	01	70
		2465	00	00	20
		2458 / 2482	00	04	40
		2455	00	01	40

1	2	3	4	5	6
	सोंयाइ – 6	2475	00	04	30
		2476	00	01	60
		2477	00	02	60
		2478	00	00	20
		2481	00	02	20

[फा. सं. आर-25011/18/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 306.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O.Duiliya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S : BUD BUD	DISTRICT : BURDWAN	STATE : WEST BENGAL			
Sl. No.	Name of the Mouza	Khasra No. (R.S)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	SUKDAL - 37	140/929	00	03	70
		140	00	09	70
		140/928	00	00	80
		143	00	00	70
2	MANKAR - 34	8058	00	00	80
		8053/9311	00	01	60
		8053	00	06	00
		8054	00	06	40
		8052	00	00	40
		8047	00	06	80
		8044	00	04	90
		8043	00	06	20
		8167	00	02	10
		8163	00	04	30
		8164	00	03	40
		8362	00	00	20
		8272	00	03	30
		8275	00	01	80
		8274	00	03	00
		8276	00	02	90
		8278	00	02	90
		8279	00	03	30
		8280	00	03	80
		8288	00	04	30
		8288/9315	00	04	60
		8287	00	03	00
		8373	00	03	90
		8372	00	00	80
		8369	00	11	70
		8345	00	04	50

1	2	3	4	5	6
	MANKAR - 34	8364	00	04	20
		8362	00	02	40
		8361	00	00	30
		8583	00	02	60
		8589	00	00	20
		8585	00	00	70
		8586	00	02	70
		8593	00	00	20
		8592	00	02	00
		8592/9328	00	01	70
		8610	00	01	90
		8611	00	00	20
		8612	00	01	90
		8610/9330	00	02	50
		8613	00	00	50
		8615	00	03	80
		8617	00	01	00
		8618	00	06	50
		8619	00	01	40
		8620	00	03	90
		8352	00	01	50
		8536	00	03	20
		8622	00	05	10
3	RAIPUR - 33	4169	00	07	40
		4165	00	04	50
		4172/5421	00	01	60
		3164/5420	00	02	10
		4164	00	02	10
		4160	00	00	20
		4161	00	03	60
		4158	00	03	10
		4157	00	02	10
		4154	00	04	80
		5444	00	03	70

1	2	3	4	5	6
	RAIPUR - 33	4155/5418	00	00	30
		4155	00	00	50
		4154/5417	00	01	10
		4229/5446	00	06	40
		4228/5445	00	00	60
		4229	00	05	60
		4230	00	08	50
		4231	00	00	60
		4138/5397	00	00	20
		4230/5447	00	00	70
		4230/4448	00	00	20
		4138/5396	00	00	40
		4139/5398	00	00	30
		4232	00	08	10
		4246	00	06	00
		4245	00	01	20
		4248	00	04	50
		4242	00	02	20
		4244	00	00	30
		4248/5321	00	07	20
		4822	00	05	60
		4823	00	00	20
		4826	00	08	00
		4827	00	01	20
		4830	00	08	00
		4833/5278	00	00	20
		4842	00	01	10
		4990	00	01	20
		4858	00	01	30
		4857	00	06	60
		4856	00	02	20
		4855	00	05	20
		4854	00	02	30
		4852	00	01	80

1	2	3	4	5	6
	RAIPUR - 33	4848	00	00	60
		4849	00	02	10
		4850	00	00	30
		4851	00	13	30
		4936	00	03	20
		4939	00	03	00
		4935	00	00	60
		4934	00	01	00
		4941	00	01	40
		4933	00	01	70
		4942	00	02	60
		4943	00	04	80
		4944	00	02	80
		4945	00	09	00
4	KOTACHANDIPUR - 29	1754	00	00	50
		1753	00	01	60
		1752	00	00	90
		1751	00	03	80
		1766	00	00	80
		1767	00	04	00
		1768	00	03	50
		1769	00	04	60
		1770	00	00	70
		1771	00	04	90
		1772	00	02	80
		1808	00	02	90
		1810	00	06	00
		1812	00	03	20
		1814	00	08	30
		1815	00	03	60
		1816	00	03	20
		1817	00	03	00
		1819	00	03	10
		1818	00	00	40

1	2	3	4	5	6
	KOTACHANDIPUR - 29	1839	00	03	00
		1840	00	06	50
		1849	00	04	30
		1848	00	01	60
		1850	00	00	20
		1847	00	00	80
		1846	00	03	00
		1844	00	02	70
		1880/2403	00	01	30
		1879	00	00	60
		1880/2402	00	01	40
		1878/6281	00	00	90
		1878	00	02	10
		1891	00	06	00
		1890	00	04	40
		2000	00	65	50
		1613	00	10	10
		5780	01	97	60
		5463	00	00	30
		5707	00	00	20
		5708	00	02	10
		5710	00	02	80
		5711	00	11	40
		5721	00	04	80
		5727	00	02	50
		5753	00	02	60
		5752	00	10	70
		5741	00	08	60
		5742	00	01	00
		5850	00	00	40
5	DHARALA - 22	318	00	02	70
		323	00	09	20
		322	00	01	90
		324	00	03	50

1	2	3	4	5	6
6	PONDALI - 21	2771	00	02	80
		2770	00	02	60
		2769	00	02	70
		2765	00	01	60
		2764	00	00	20
		2778	00	05	10
		2779	00	00	80
		2777	00	05	00
		2781	00	03	00
		2782	00	00	20
		2786	00	04	70
		2785	00	08	40
		2893/3626	00	00	60
		2827	00	00	50
		2891	00	00	20
		2890	00	04	40
		2876	00	01	70
		2877	00	00	20
		2872	00	01	90
		2871	00	01	60
		2870	00	04	30
		2862	00	00	20
		2868	00	06	90
		2881	00	00	20
		2865	00	02	70
		2867	00	00	20
		2853	00	09	10
		2863	00	04	40
		2855	00	03	90
		3042	00	05	30
		3033	00	01	30
		3034	00	04	70
		3040	00	07	10
		3093	00	00	20

1	2	3	4	5	6
	PONDALI - 21	3095	00	00	20
		3094	00	05	60
		3090	00	04	20
		3086	00	01	20
		3068	00	00	30
		3085	00	02	00
		3084	00	03	00
		3083	00	01	40
		3082	00	02	40
		3081	00	02	40
		3080	00	00	20
		3079	00	06	20
		3450	00	05	90
		3562	00	01	40
		3563	00	02	20
		3564	00	01	70
		3578	00	05	60
		3627	00	03	00
		3591	00	00	60
		3590	00	03	60
		3589	00	01	90
		3588	00	04	30
		3596	00	00	20
		3597	00	02	00
		3579	00	03	00
		3586	00	00	40
		3587	00	01	90
		3584	00	00	20
		3598	00	04	20
		3599	00	01	30
		3619	00	04	40
		1141	00	00	30
		1142	00	01	90
		1146	00	03	90

1	2	3	4	5	6
	PONDALI - 21	1147	00	00	90
		1151	00	01	70
		1111	00	01	20
		1112	00	01	40
		1136	00	00	20
		1125	00	03	60
		1122	00	00	70
		1124	00	02	90
		1123	00	02	90
		1120	00	01	90
		1121	00	00	20
		1119	00	02	40
		1118	00	01	90
		1113	00	01	60
7	SONAI - 6	1555	00	02	10
		1556	00	04	80
		1554	00	00	20
		1572	00	02	00
		1557	00	00	20
		1571	00	04	50
		1573	00	06	30
		1645	00	01	00
		1644	00	04	70
		1648	00	03	20
		1647	00	02	50
		1652	00	00	50
		1691	00	00	40
		1650	00	02	40
		1651	00	05	50
		1666	00	02	50
		1665	00	06	90
		1664	00	01	40
		2034	00	01	00
		2041	00	03	40

1	2	3	4	5	6
	SONAI - 6	2037	00	00	20
	Contd...	2047	00	04	50
		2042	00	00	20
		2046	00	00	50
		2073	00	03	20
		2074	00	03	20
		2072	00	00	20
		2075	00	02	00
		2081	00	01	10
		2077	00	02	40
		2079	00	02	20
		2080	00	00	20
		2078	00	00	90
		2082	00	01	40
		2083	00	04	30
		2350	00	01	80
		2358	00	00	20
		2350/2507	00	00	20
		2357	00	01	20
		2356	00	02	40
		2355	00	00	20
		2419	00	05	40
		2418	00	04	10
		2417	00	01	80
		2416	00	02	10
		2421	00	03	50
		2460	00	02	50
		2461	00	01	20
		2426	00	00	20
		2459	00	06	80
		2458	00	01	70
		2465	00	00	20
		2458/2482	00	04	40
		2455	00	01	40

1	2	3	4	5	6
	SONAI - 6	2475	00	04	30
	Contd...	2476	00	01	60
		2477	00	02	60
		2478	00	00	20
		2481	00	02	20

[F. No. R-25011/18/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 307.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगांम से कांडला तक पेट्रोलियम उत्पादन के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमे उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के आधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री. एम. जी. परमार, सक्षम प्राधिकारी (गुजरात), इंडियन ऑयल कार्पोरेशन लिमिटेड, (पाइपलाइन्स प्रभाग),प्लॉट नं. 10, पटेल सोसायटी, आय. ओ. सी. एल. कॉलोनी के पास, विरमगांम, जि. अहमदाबाद (गुजरात) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

जिला : सुरेंद्रनगर राज्य : गुजरात

तहसिल का नाम	गांव का नाम	सर्वे संख्या	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
1	2	3	4	5	6
हलवद	जुना देवलीया	742	0	07	56
		689/P/1	0	07	47

[फा. सं. आर-25011/7/2009-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 307.— Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of Petroleum Products from Viramgam to Kandla in the State of Gujarat, a branch pipeline should be laid by the Indian Oil Corporation Limited;

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under sub-section (1) of section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing for laying of the pipeline under the land to Sri. M.G Parmar, Competent Authority, Indian Oil Corporation Limited, at office Plot no. 10, Patel Society , Near I.O.C.L colony, Viramgam, District Ahmedabad 382150 (Gujarat).

SCHEDULE

District : Surendranagar **State : Gujarat**

Name of Tahsil	Name of Village	Survey No.	Area		
			Hectare	Are	Sq. Mtr.
1	2	3	4	5	6
HALVAD	JUNA DEVALIYA	742	0	07	56
		689/P/1	0	07	47

[F. No. R-25011/7/2009-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 308.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगांम से कांडला तक पेट्रोलियम उत्पादन के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमे उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अत:, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के आधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री. एम. जी. परमार, सक्षम प्राधिकारी (गुजरात), इंडियन ऑयल कार्पोरेशन लिमिटेड, (पाइपलाइन्स प्रभाग),प्लॉट नं. 10, पटेल सोसायटी, आय. ओ. सी. एल. कॉलोनी के पास, विरमगांम, जि. अहमदाबाद (गुजरात) को लिखित रूप में आक्षेप भेज सकेगा।

जिला : कच्छ राज्य : गुजरात

अनुसूची

तहसिल का नाम	गांव का नाम	सर्वे संख्या	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मीटर
1	2	3	4	5	6
भचाऊ	मोटी चिराइ	1003/P113	0	45	00

[फा. सं. आर-25011/6/2009-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 308.— Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of Petroleum Products from Viramgam to Kandla in the State of Gujarat, a branch pipeline should be laid by the Indian Oil Corporation Limited;

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under sub-section (1) of section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing for laying of the pipeline under the land to Sri. M.G Parmar, Competent Authority, Indian Oil Corporation Limited, at office Plot no. 10, Patel Society , Near I.O.C.L colony, Viramgam, District Ahmedabad 382150 (Gujarat).

District : Kutch **State : Gujarat**

SCHEDULE

Name of Tahsil	Name of Village	Survey No.	Area		
			Hectare	Are	Sq. Mtr.
1	2	3	4	5	6
BHACHAU	MOTI CHIRAI	1003/P113	0	45	00

[F. No. R-25011/6/2009-O.R.-I]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 4 जनवरी, 2013

का.आ. 309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 9/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/72/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 4th January, 2013

S.O. 309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management Vijaya Bank and their workman, which was received by the Central Government on 4-1-2013.

[No. L-12012/72/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D.No. 9/2011

Shri Rajesh Kumar
Kothi No. 83, Roorkee Road,
Chandseena Bhawan,
Meerut Cantt.
Meerut (U.P.) .....Workman

Versus

1. The Chairman & Managing Director,
Vijay Bank, Head Office,
41/2,Trinity Circle, M. G. Road,
Bangalore-560001.

2. The Branch Manager,
Vijaya Bank Abulane
Meerut (U. P.) .....Management

AWARD

A part time sweeper was engaged at Meerut branch of Vijaya Bank (in shot the bank) on casual basis. He was engaged intermittently. His wages were paid on daily rate basis. His engagement was discontinued on 26-7-2007. Aggreived by that act of the bank, he raised a demand for reinstatement in service. When his demand was not conceded to, he raised an industrial dispute before the Concilition Officer. The bank contested his claim, as such conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Govt. referred the dispute this Tribunal for adjudication, vide order No. 12012/72/2010-IR (B-II) New Delhi, dated 9-12-2010 with following terms:

"Whether the action of the management of Vijaya Bank in terminating the services of Shri Rajesh Kumar, Part Time Sweeper w.e.f. 26-7-2007 is legal and justified? what relief the concerned workman is entitled to?"

2. Claim statement was filed by casual part time sweeper, namely, Shri Rajesh Kumar pleading that he worked with the bank since 5-3-1999. He was engaged by the bank in consonance with recruitment rules. His engagement was against a permanent post. His wage were paid on vouchers. He made a request for regularisation of his services on 20-8-2003. Bank authorities forward his petition for regularisation in service to the higher authorities on 16-4-04. He used to work upto 2 : 30 PM every day. Floor area of the branch was 2285.89 sq. feet and he was entitled to paymente equal to 3/4 of scale wages of a sub staff. Instead of paying wages to him, in accordance to his eligibility, his services were illegally dispensed with on 28-4-08.

3. The claimant presents that order dated 28-4-08, on the strength of which his services were terminated, is illegal land unwarranted. No opportunity of being heard was given to him. Termination of his service is violative of industrial law. He claims reinstatement in service with continuity and full back wages, besides regularisation of his services in the bank.

4. Claim was demurred by the bank pleading that the claimant was engaged in Meerut branch of the bank as a temporary part time sweeper. Since 1999 he was engaged intermittently for short spells. He was never engaged through employment exchange. Initially he was paid at the rate of Rs. 50 per day, which amount was subsequently increased to Rs. 60 per day. A request was made to regional office Lucknow, to appoint the claimant as permanent part time sweeper, which request was not conceded to since he did not fulfil the eligibility criteria. His engagement was discontinued on 26-07-07. Since he was a part time employee, there was no occasion for him to work in the branch upto 2:30 PM every day. The claimant had not worked continuously 240 days in any calendar year, hence provisons of industrial law were not applicable to him. There is no case in favour of the claimant for his reinstatement in service of the bank. His claim may be dismissed, pleads the bank.

5. Claimant has examined himself in support of his claim. The bank had examined Shri Murli Kishan and Shri V. Narayan Shettey in support of its defence. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri R.S. Saini, authorised representative, advanced arguments on behalf of the claimant. Shri Gaurav Malhotra, authorised representative, presented facts on behalf of the bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

7. Claimant deposed that the joined service of the oank on 5-3-99 as part time sweeper. Prior to that he was serving at the residence of Senior Manager, Meerut branch of the bank. Initially he was paid @ Rs. 40 per day. Later on he was paid wages @ Rs. 1200 per Month. Shri Muttappa wrote a letter to the Deputy General Manager, requesting him to sanction a post of permanent sweeper. In the year 2004, Senior Manager wrote to Deputy General Manager, requesting him to make him (witness) permanent on the post of Sweeper. He worked continously in the branch . In the year 2008 his services were dispensed with on a wrong notion of his suffering from a serious skin decease. He relied on documents Ex. WW1/1 to Ex. WW1/9 to substantiate his claim.

8. Shri Murli Kishan testifed that in June 2010 he took charge as Chief Manager, Sadar Bazar, Meerut Contonment Branch of the bank. On checking of records, he found that the claimant worked as a temporary part time sweeper intermittently from March 1999 till July 2007. On 27-7-2007 services of the claimant were disengaged. He highlights that in 1999 claimant worked only for 4 days. One Shri Rakesh Kumar was working as permanent part time sweeper in the bank. In March 2001 he was promoted and transferred to Aligarh. From March 2001 till December 2001 the claimant worked for 3 days only. He worked for 12 days in year 2002. In 2003 he worked for 35 days only. Claimant worked for 22 days in 2004, for 64 days in 2005, for 73 days in 2006 and for 22 days in 2007. He worked for 16 days in the year 2008 also.

9. Shri V. Narayan Shettey unfolded that in May 2004, he was posted as Senior Manager in Meerut branch of the bank. With a view to help the claimant, he wrote letter Ex. W W1/2 to the Regional Office. He detailed in the letter under reference that the claimant was working in Meerut branch of the bank since March 2001, without checking the records. He wrote that letter at the instance of the claimant with a view to help him.

10. When facts unfolded by the claimant and those deposed by Shri Murli Kishan Shettey are appreciated, it came to light that rival claims are projected by the parties. Claimant asserts that he worked continuously with the bank since March 1999 and as such letter Ex.WW1/2 was written to the higher authorities recommending a case for regularisation of his services. He presents that his services were abruptly terminated by the bank in the year 2008, which action is illegal and uncalled for. He also agitates that retrenchment compensation was not paid to him. On the other hand Shri Murli Kishan spells out different period for which the claimant was engaged from the year 1999 till 2008. As declared by him, the claimant never worked continuously for 240 days in any of the calendar year. As regards recommendation of case of the claimant for regularization of his services, Shri Shettey detailed that Ex.WW1/2 was written at the instance of claimant with a view to help him, without verifying facts. Facts detailed by Shri Murli Kishan and Shri Shettey were not dispelled by the claimant, either by way of their cross examination or by way of production of some evidence, direct on circumstantial.

11. It is a settled proposition of law that the claimant had to lead evidence to show that in fact he worked for 240 days in 12 preceding months from the date of his termination. Mere filing of affidavit cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that the claimant had, in fact, worked for 240 days in a year. Burden to prove that he rendered service for 240 days or more, lies upon the claimant, when such claim is denied by the employer. Law to this effect was laid in Range Forest Officer (2002 LLR 339) Issen Deinki [2003 SC (L&S) 113], Rajasthan State Ganganagar's Mills Ltd. [2004(103) FLR 192] and Municipal Corporation, Faridabad [2004(8) SSC 195].

12. Workman can discharge onus on him by adducing cogent evidence, which may be oral or documentary. In a case of an industrial employee, possibility of not providing any appointment letter or wage slip, attendance register and termination letter by an employer cannot be ruled out. In case the workman wants the employer to produce the record and the letter opts not to produce it, the Tribunal may draw inference against the employer. In R. M. Yellatti [2006(1) SSC 106], the Apex Court was confronted with such a proposition wherein law was laid as follows:

"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be

no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman can only call upon the employer to produce before the court nominal muster roll for the given period, the letter of appointment or termination, if any, the wage rigister, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statement made by the claimant/ workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

The above position was again reiterated in recent judgements in Shyamal Bhowmik [2006 (1) SCC 337], Sham Lal [2006 VIAD (SC) 1] and Gangaben Laljibhai and Others [2006 VIAD (SC) 31].

13. As detailed above, it is well established that onus to prove 240 days continuous service lies on the employee. to discharge that onus the claimant detailed ouclar facts, coupled with Ex. WW1/2. His ocular testimony comses in conflict with facts unfolded by Shri Murli Kishan.To substantiate fact Shri Murli Kishan had filed photocopy of vouchers on the strength of which payment was made to the claimant, besides photocopy of general charges register. Authenticity of these documents were certified by the bank and not questioned by the claimant. These documentary evidence corroborate ocular facts detailed by Shri Murli Kishan. Letter Ex.W1/2 was written by Shri Shettey, without verifying facts. He explains that it was so written with a view to help the claimant. No eyebrows were raised by the claimant against the explanation offered by Shri Sethi. His explanation is found to be nearer to the truth. Therefore I have no hesitation to accept it and conclude that contents of Ex. WW1/2 nowhere espouse the claim put forward by the claimant.

14. Shri Murli Kishan declares that in 1999 one Rakesh Kumar was working as permanent part time sweeper in the bank. In March 2001 he was promoted and transferred to Aligarh. This piece of evidence remained unassailed. Thus it is clear that from 1 999 till March 2001 there was no occasion for the bank to engage the claimant continuously. Claim put forward by the claimant in that regard is held to be unfounded. It may be pointed out that the claimant could not project a case of drawing an adverse inference against the bank for non-production of records, relating to engagement of the claimant at spells.

15. After promotion and transfer of Shri Rakesh Kumar, Claimant was engaged in the bank for short spells, often and then. He worked for 3 days in 2001, as detailed by Shri Murli Kishan. In 2002 he worked for 12 days, 35 days in 2003, 22 days in 2004, 64 days in 2005, 73 days in 2006, 22 days in 2007 and 16 days in year 2008, announced Shri Murli Kishan. Facts declared by him get reaffirmation from photocopies of vouchers and general charges register, In view of these circumstances I conclude that ocular testimony of the claimant gives way to facts detailed by Shri Murli Kishan. There is no evidence over the record to conclude that the claimant rendered continuous service of 240 days in any of the calendar year.

16. Provisions of section 25-F of the Industrial Disputes Act, 1947 (in short the Act) comes into operation only when an employee had rendered 240 days of continuous service, in preceding 12 months from the date of termination of his service. When an employee had not rendered continuous service of 240 days with an employer, provisions of section 25-F would not come into operation, in case of retrenchment of his services. No evidence worth name was brought on record that there were juniors to the claimant, who were retained when his services were terminated. In such a situation provisions of section 25-G of the Act would also not apply. No evidence is also there to the effect that someone else was engaged by the bank as sweeper, without making he an offer for re-employment. Hence application of the provisions of section 25-H is also uncalled for. These reasons make it clear that the claim put forward by the claimant has no substance. There is no illegality of unjustifiability in the action of the bank. Claimant is not entitled to any relief. An award is, passed in favour of the bank and against the claimant. It be sent to the appropriate Govt. for publication.

Dated: 06-12-2012

Dr. R.K. YADAV, Presi. .ng Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 310 .- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. आई. डी-33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/105/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 4th January , 2013

S.O. 310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I D-33/

2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management of Vijaya Bank and their workman, which was received by the Central Government on 4-1-2013.

[No. L-12011/105/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 20th December, 2012

Present: A.N. JANARDANAN,

Presiding Officer

INDUSTRIAL DISPUTE No. 33/2012

(In the matter of the dispute for adjudication under clause (d) of sub- section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Vijaya Bank and their workmen).

BETWEEN

The Regional Secretary, 1st Party / Petitioner
Vijaya Bank Workers Organization .....Union
No. 60/2, Big Street
Triplicane,
Chennai-600005

AND

1.The Dy. General Manager 2nd Party /1st Respondent
(PA&PD)
Vijaya Bank, Personnel Department
41/2, M.G. Road, Trinity Circle
Bangalore-560001

2. The Dy. General Manager 2nd Party /2nd Respondent
Vijaya Bank, Regional Office
123, Marshalls Road
Egmore
Chennai-600008

Appearance :

For the 1st Party/ : Petitioner — Authorized Representatives, Sri R. Vijaya Kumar and S.D. Srinivasan being President and General Secretary

For the 1st and 2nd Party : Respodent — Authorized Representatives, Sri K. Sathish Shetty, Assistant General Manager and Ms. M.S. Annapoorna Senior Manager (Law).

AWARD ON SETTLEMENT

The Central Government, Ministry of Labour vide Order No. L-12011/105/2011-IR (B-II) dated 29-05-2012 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

"Whether the action of the management of Vijaya Bank in withdrawing the customary practice and conventions adopted over since 2-1/2 decades in the matter of disbursal of advance salary to employees for one State Level/Regional Level and one all India and one common festival to the employees of Tamil Nadu, Puducherry and Andaman and Nicobar Islands vide Circular No. 11011 of 10-01-2011 is just and legal? If not, what relief the workmen are entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. 33/2012 and notices were issued to both the parties and both the parties entered appearance through their Authorized Representatives and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. Short recitals of the dispute are as follows:

The Respondent Bank without complying with the provisions of Section-9A of I. D. Act withdrew the age old practice and convention adopted since over two and half decades in the matter of disbursal of advance salary to employees for one State Level/Regional festival, one All India Festival and one Common Festival customary concession and privilege through its Circular letter No. 11011 dated 10-01-2011 arbitrarily, illegally and unlawfully. There is violation of Section-33 of I. D. Act also. Hence it may be held that the action is not just and legal directing the Respondent Bank to restore the facility. In the Counter filed by Respondent Management, it is contended, inter-alia, that the claim of the petitioner is not sustainable in law. Section-9A of the I.D. Act is not applicable. Advance salary disbursal for the festivals in the Bank does not have the sanction of law. Same does not amount to any customary concession and privilege and the dispute was sought to be dismissed.

4. Points for consideration are:

(i) Whether withdrawal of disbursal of advance salary to the employees of Tamil Nadu, Puducherry and Andaman and Nicobar Islands vide Circular No. 11011 dated 10-01-2011 is just and legal?

(ii) To what relief the concerned employees are entitled to?

Points (i) and (ii)

5. When the dispute stood for further proceedings at the interrogation of the Court both parties expressed consent to moot proposals for settlement of the dispute. On behalf of the petitioner by a memo dated 14.12.2012 it

was requested with the consent of the other party to post the case in the Adalat scheduled to be held on 20-12-2012. The dispute thus referred to the Adalat when was taken up in the Adalat in the presence of AGM and Senior Manager (Law) Regional Office, Vijaya Bank, Chennai representing the Management and the President and Dy. General Secretary representing Vijaya Bank Workers Organisation, the matter was discussed at length and an amicable settlement was reached drawing up a Memorandum of Settlement in terms thereof and reduced to writing in the Memorandum of Settlement by which the parties mutually agreed that the Management of Vijaya Bank shall restore the said practice and disburse the salary for the national festivals viz. (a) Diwali (b) Ramzan and (C) Christmas in a calendar year and further that the salary shall be disbursed 7 days in advance except where the festival happens to be on or before the 7th day of the month in which instance the advance salary is to be disbursed after 10th and before 15th of said month and in token whereof the parties have subscribed their signatures with their official seals treating the dispute to have been closed.

6. The Memorandum of Settlement is recorded on being satisfied that the settlement arrived between the parties is voluntary and that the same is beneficial to both the parties. They also have subscribed their signatures to the settlement fully knowing the terms of the settlement and its impacts thereon.

7. Accordingly an award is passed in terms of the settlement and the dispute abates. The Memorandum of Settlement will form part of the award .

8. The Award will become effective after 30 days from the date of its publication in the Gazette of India, unless the Management otherwise decides to give effect to the same at an earlier date.

9. The reference is settled accordingly.—

(Dictated to the PA, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th December, 2012).

A.N. JANARDANAN. Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner	None
For the 2nd Party/Management	None

Documents Marked :—

On the petitioner's side

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

MEMORANDUM OF SETTLEMENT

DATED 20-12-2012 ENTERED INTO BETWEEN THE MANAGEMENT OF VIJAYA BANK AND VIJAYA BANK WORKERS' ONGRGANISATION (THE MAJORITY RECOGNISED WORKMEN UNION IN THE BANK) IN THE MATTER OF DISBURSAL OF ADVANCE SALARY TO EMPLOYEES FOR NATIONAL FESTIVALS, BEFORE THE LOK ADALAT CONDUCTED BY THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM - LABOUR COURT AT CHENNAI.

IN THE PRESENCE OF.

HONOURABLE MR. A N JANARDANAN.

PRESIDING OFFICER, CGIT, CHENNAI

PARTIES PRESENT

Representing the Management of Vijay Bank	Representing Vijay Bank Workers' Organisation
1. K. Sathish Shetty Assistant General Manager Regional Office, Chennai	1. R. Vijaya Kumar. President
2. Annapoorana M. S. Senior Manager (Law) Regiional Office Chennai	2. S D Srinivasan. Deputy General Secretary

Whereas Vijaya Bank Workers' Organisation, Tamilnadu Region, raised an Industrial dispute on 12th January, 2011, regarding the alleged withdrawal of the practice and convention followed by Vijaya Bank in the matter of disbursal of advance salary to employees for National/State level festivals.

Whereas the dispute ended in failure and the Government of India, Ministry of Labour through its order dated 29-05-2012 referred the matter to Central Government Industrial Tribunal -cum-Labour Court Chennai for adjudication.

Whereas the Management of Vijaya Bank and the Union, Vijaya Bank Workers' Organisation decided to resolve the dispute amicably and requested the Honorable Central Government Industrial Tribunal-cum-Labour Court, Chennai, to transfer and place the said dispute before the Lok Adalat for favorable disposal by entering into a bilateral settlement between the parties concerned.

For VIJAYA BANK WORKERS' ORGANISATION

Whereas the request of the parties have been conceded by the Honorable Central Government Industrial Tribunal-cum-Labour Court, Chennai, and the matter has been transferred and being taken up before the Lok Adalat

for expeditious settlement on the following terms and conditions:—

1. It is mutually agreed that the Management of Vijaya Bank shall restore the said practice and disburse the salary for the following three National Festivals in a calendar year.

(a) Diwali, (b) Ramzan, and (c) Christmas.

2. The salary shall be disbursed seven days in advance. However if the festival happens to be on or before 07th day of a month, then advance salary will be disbursed only after 10th and before 15th of the said month. Accordingly the Industrial Dispute No.33/2012 stands closed.

Dated this the 20th day of December, 2012 at Chennai.

ON BEHALF OF THE MANAGEMENT — ON BEHALF OF THE UNION

1. K SATHISH SHETTY. — 1. R. Vijaya Kumar, President

2. ANNAPOORNA M S — 2. S.D. SRINIVASAN

IN THE PRESENCE OF:

MR. A N JANARDANAN,

PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, CHENNAI

नई दिल्ली, 4 जनवरी, 2013

का.आ. 311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/68/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-12025/13/2004-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/68 of 2004) of the Central Government Industrial Tribunal/Labour Court,-I, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 4-1-2013.

[No. L-12025/13/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

JUSTICE G.S. SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/68 OF 2004

Parties: Employers in relation to the management of Bank of Baroda

And

Their Workmen

Appearances:

For the Management : Mr. Lancy D'Souza, Management Representative.

For the workmen : Mr. Jaiprakash Sawant, Adv.

State : Maharashtra

Mumbai, dated the 5th day of December 2012.

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

"Whether the workers listed in Exhibit A to the petition are entitled to be regularized/absorbed in the services of the respondent Bank of Baroda with consequential benefits? If yes, from what date?"

2. Ex. A consists the names of 61 workers.

3. By orders dtd. 10-6-2008, 5-8-2008, 12-11-2008, 14-11-2008, 6-2-2009, 13-2-2009, 20-2-2009, 31-3-2009, 2-4-2009 and 24-6-2010 the names of 56 workers have been deleted.

4. There now remains 5 workers.

5. An application has been filed by Mr. Jaiprakash Sawant, learned counsel for the workers today stating therein that the remaining 5 workers are not interested in pressing the claim and, therefore, the reference be disposed of for want of prosecution.

6. Looking to the prayer made in the above application, this reference stands disposed of as not prosecuted by the workers.

7. Award is passed accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 8 जनवरी, 2013

का.आ. 312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, मुम्बई के पंचाट (संदर्भ संख्या 1/26/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/105/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 8th January, 2013

S.O.312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/26 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court, 1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 7-1-2013.

[No. L-12012/105/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

JUSTICE G.S. SARRAF, Presiding Officer

REFERENCE No. CGIT-1/26 of 2005

Parties : Employers in relation to the management of Canara Bank

And

Their Workman M.A.R.Shaikh

Appearances:

For the Management : Mr.S.Alva, Adv.

For the workman : Mr.A.S.Peerzada, Adv.

State : Maharashtra

Mumbai, dated the 7th day of December, 2012

AWARD

In exercise of powers conferred by clause (d) of sub- section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the follwoing dispute for adjudication to this Tribunal.

"Whether the action of the management of Canara Bank, Circle Office, Mumbai City, Mumbai in dismissing the services of Shri M.A.R.Shaikh is justified? If not, what relief the concerned workman is entitled to? "

According to the statement of claim filed by the second party workman M.A.R.Shaikh he joined the services of Canara Bank (hereinafter referred to as the Bank) w.e.f. 20-8-1977 as sub-staff and he was discharging his duties sincerely and honestly. Though the second party workman was working in the category of sub-staff and had no authority to open or recommend the opening of any Bank account and he was not involved in the incident of fraud yet a chargesheet was issued against him. The witness Onali Godhrawala was not examined in the enquiry and the second party workman was denied a fair enquiry. The allegations levelled against the second party workman do not constitute any misconduct and, therefore, the enquiry report is ex- facie perverse. He has, therefore, prayed that he be reinstated with full back wages and continuity of service and all consequential benefits.

According to the written statement filed by the Bank the second party was issued a chargesheet dt. 17-8-2002 for prevailing upon Onali Godhrawala to sign a blank Account opening from which was subsequently handed over by him to Shirish P. Sevak an employee of General Electric Manufacturing Company. This account opening form was utilized to open current account no.205344 in the name of Ocean Exports represented by its proprietor Ram Prasad Sharma at A.R.Street Branch of the Bank. Branch Advice bearing IBA No.11601 dt.1-9-2001 for Rs.18,45,700 purported to have been originated from Anna Salai Branch, Chennai was credited in the said current account and an amount of Rs.18,00,000 was subsequently withdrawn from the said account. It was later revealed that the Branch Advice was fake and signature of the authorized signatories thereon were forged. The second party workman failed to take all possible steps to ensure and protect the interest of the Bank and caused willful damage to the properties of the Bank. The Disciplinary Authority imposed the punishment of dismissal on the second party workman after giving him all reasonable opportunity to defend himself. The Appellate Authority declined to interfere with the findings of the Enquiry Officer and the orders of the Disciplinary Authority. According to the written statement the second party workman was cautioned for issuing cheques without maintaining sufficient funds during 1989-1993. In 1998 he was instructed to close his account because he was habitually issuing cheques without maintaining sufficient funds. His cheque book facility was withdrawn and he was not permitted to open any account with the Bank. He was also cautioned for throwing the local tappal on the road which was found by one of the customers of the branch in 1993. According to the written statement the second party workman actively abetted the commission of fraud and, therefore, the action taken by the Bank does not suffer from any infirmity. The enquiry was conducted against the second party workman in consonance with principles of natural justice and sufficient opportunity was given to him to defend himself. Onali Godhrawala was produced before the Enquiry Officer on 22-4-2003 but the second party workman sought adjournment and thereafter inspite of best efforts of the Presenting Officer the said witness could not be produced. However, the statement of Onali Godhrawala recorded by the Investigating Officer was brought on record before the Enquiry Officer. The statement given by the second party workman to the Investigating Officer is also on record wherein the second party workman has admitted that he approached Onali Godhrawala for introduction. The findings of the Enquiry

Officer are based on the evidence produced before him and, therefore, his findings cannot be said to be perverse. The Bank has, therefore, prayed that the reference be rejected.

The second party workman has filed rejoinder wherein he has reiterated his stand.

Following Issues have been framed.

(1) Whether the enquiry is not fair and proper?

(2) Whether the findings of the Enquiry Officer are perverse?

(3) Whether the action of the management in dismissing the services of M.A.R.Shaikh is justified?

(4) Relief?

The second party workman has filed his affidavit and that of B.S.A.Rao and they have been cross-examined by learned counsel for the Bank. The Bank has filed affidavit of Vinayak P.Saraf who has been cross-examined by learned counsel for the second party workman.

Heard Mr. Peerzada learned counsel for the second party workman and Mr. Alva learned counsel for the Bank.

ISSUE NO.1: The second party workman has stated in his cross- examination :

> I received the chargesheet dt.17-8-2002. I came to know whatever written in the chargesheet by the Union. I was duly intimated all the date of enquiry. Defence representative contested the enquiry on my behalf. He was office bearer of the Union. I was given all the copies of documents alongwith the chargesheet which were relied upon by the management. I was given the copy of the list of witnesses. I was given the copies of the enquiry proceedings. I was given the opportunity to cross-examine management witnesses. I did not examine myself as a witness in the enquiry.

The second party workman does not say that he did not understand the charges or that he was not given full opportunity to defend himself. There is nothing on the record to show that the enquiry held against the second party workman is not fair and proper.

Issue no.1 is, therefore, decided against the workman.

ISSUE NO.2: As per the chargesheet following are the allegations against the second party workman:

The second party workman approached Onali Godhrawala holder of the Current Account no.7819 along with a blank current account opening form and requested Godhrawala to help the second party workman to open an account for his friend. The second party workman prevailed upon Godhrawala to sign the bank account opening form as introducer without any authority to do so and violated the rules and regulations laid down by the Bank. The second party workman subsequently handed over the bank current account opening form containing the signature of Godhrawala to Shrish R.Sevak an employee of General Electric Manufacturing Company. Later this account opening form was utilized to open the aforesaid current account with A.R.Street Branch. This facilitated the culprits to fraudulently withdraw an amount of Rs.18 lakhs from A.R.Street Branch by producing two fake branch advices forging the signatures of the officials mentioned in the branch advices.

Now let us look at the findings of the Enquiry Officer which are as under :

The chargesheeted employee has failed to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost honesty, integrity, devotion and diligence as envisaged by Chapter-XI Regulation 2(A)(1) of Canara Bank Service Code. The second party workman has approached Onali Godhrawala for signature and introduction of the account and has prevailed upon him to sign the bank account opening form as introducer. The said fact was not revealed to the official superiors and such acts amounted to causing willful damage to the properties of the Bank and thereby the second party workman has committed gross misconduct within the meaning of Chapter XI Regulation 3, clause (j) of Canara Bank Service Code.

Onali Godhrawala has not been examined in the enquiry though his statement is said to have been recorded by the Investigating Officer. The second party workman has admitted in his cross-examination that the letter dt.21.9.2001 has been written and signed by him. In the above letter the second party workman has stated that Shirish Sevak an employee of General Electric Manufacturing Company approached him with request to help him to find an introducer for opening a current account whereupon he took the account opening form to Onali Godhrawala and asked him whether he could introduce and without any persuasion from him Onali Godhrawala signed as introducer and affixed his stamp and thereafter he handed over the account opening form to Shirish Sevak.

The second party workman was working as a sub-staff and it is an admitted position that sub-staff has no authority to open bank account of any customer.

This may be correct that strictly it might not be the duty of the second party workman to get an account opening form of a prospective customer signed by any existing customer of the Bank but it is too much to say that he committed gross misconduct by doing this when it is not the case of the Bank that Onali Godhrawala signed the account opening form as introducer on account of any force, threat or inducement or any other fraudulent misrepresentation.

The question is that if a sub-staff asks any customer to sign an account opening form as introducer and the customer signs that form as introducer and subsequently if that account is opened and some fraud is committed in that account then whether the sub-staff can be said to have committed any gross misconduct?

After a careful consideration of the entire matter I am clearly of the opinion that mere taking an account opening form to a customer for his signature as introducer cannot amount to any misconduct if the customer signs that account opening form as introducer and after opening the account any fraud is committed in that account.

In view of the above discussion it is clear that even if it is accepted that the second party workman acted in the way as alleged in the chargesheet still that act does not amount to misconduct. It is thus clear that the conclusion reached by the Enquiry Officer that the second party workman committed gross misconduct is wholly erroneous. The findings of the Enquiry Officer are manifestly perverse.

Issue no. 2 is , therefore decided against the Bank.

Issue No. 3 Since Issue no.2 has been decided against the Bank, therefore, this has become redundant.

Issue No.4: Since Issue no.2 has been decided against the Bank, therefore, the second party workman is entitled to reinstatement. In the facts and circumstances of the matter ends of justice will meet if he is given 50% of back wages.

ORDER

The Bank is directed to reinstate the second party workman M.A.R.Shaikh within a period of two months with 50% back wages.

Final Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 313 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 77/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/85/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O. 313 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workmen, received by the Central Government on 10-1-2013.

[No. L-41012/85/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGITINGP/77/2007

Dated the , 6th December, 2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed. Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No.1

The Sr. Divisional Commercial

Manager, South East Central

Railway, Nagpur Division,

Nagpur (MS).

V/s

Party No.2

The General Secretary,

Parcel Porter Sanghatna,

South East Central Railway,

New Mankapur, Plot No. 37,

Mhada Colony, Nagpur- 30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Bhagwan Sadashiv Thawkar, for adjudication, as per letter No.L- 41012/85/2005-IR (B-I) dated 01-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the

action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/ stopping from the services of Shri Bhagwan Sadashiv Thawkar, Parcel Porter w.e.f, 3-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party chellenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 314 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 76/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/87/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O. 314 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the manaegement of South East Central Railway and their workmen, received by the Central Government on 10-1-2013.

[No. L-41012/87/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/76/2007

Dated the , 6th December, 2012

Both the parties are absent on calls. None appears on behalf of either of the parties: The union representative is absent. No statement of claim is filed. Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No.1

The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division,
Nagpur (MS).

V/s

Party No. 2

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony, Nagpur- 30 (MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Rakesh Sawaitful, for adjudication, as per letter No.L-41012/87/2005-IR(B-I) dated 01-11-2007, for-adjudication with the following schedule:—

"Whether the Parcel Porters /Hammal are workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Rakesh Sawaitful, Parcel Porter w.e.f. 3-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournment of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lie upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for

him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief.

Hence, it is ordered:—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 315 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 74/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/134/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O. 315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workmen, received by the Central Government on 10-1-2013.

[No. L-41012/134/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/74/2007

Dated the , 6th December, 2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No.1

The Sr. Divisional Commercial
Manager, South East Central
Railway, Nagpur Division,
Nagpur (MS).

V/s

Party No.2

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony, Nagpur- 30 (MS).

AWARD

(Dated : 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) (" the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to management of South East Central Railway and their workman, Shri Radheyshyam Kaluram Gaudhad, for adjudication, as per letter No.L- 41012/134/2005-IR(B-I) dated 8-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/ stopping from the services of Shri Radheyshyam Kaluram Gaudhad, Parcel Porter w.e.f. 3-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court must fail. Whenever a workman raises a.dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenge workman and he must also pruduces evidence to prove his csae. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relie Hence, it is ordered:-

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P.CHAND, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय I चन्डीगढ़ के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/115/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O. 316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I D 01/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the maagement of UCO Bank and their workman, which was received by the Central Government on 9-1-2013.

[No. L-12012/115/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI S. P. SINGH PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CUM-LABOUR COURT I CHANDIGARH

Case No. I D 1 of 2012

R.S.Attri, House No. 2176, Urban Estate, Opp. DAV School, Jind Haryana. .....Workman

Versus

The Deputy General Manager, UCO Bank, Zonal Office, Sector, 17-B Chandigarh. .... Management

Appearances:

For the workman : Shri B. Parshad.

For the management : Shri. S. C. Monga.

AWARD

Passed on 27th of December 2012

Central Government vide letter No. L-12012/115/2011-IR(B-II) dated 23-3-2012 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of imposing the punishment of compulsory retirement from service with superannuation benefits upon Shri R.S.Attri, Ex-special assistant vide order dated 25-5-2010 is legal and justified? What relief the workman concerned is entitled to?"

2. On receipt of the reference notices were issues to the parties. Workman appeared and filed his claim statement. The facts of the case as per the workman are that he joined the service of the bank on 20-12-1978 in Clerical Cadre and selected as a Special Assistant at Budhakhera Branch of the bank. The workman rendered excellent service resulting in the growth in business of the bank during his short stay at the said branch. It is pleaded by the workman that all of a sudden on 16-7-2009, he was placed under suspension without stating any reason just to curb his Trade Union activities as he was the State Secretary of the UCO Bank Employees Association Punjab, Haryana and Chandigarh and also Joint Secretary of Bank Employees Federation of India Haryana and its Central Committee Member. He was served with a charge-sheet. He replied to the charge-sheet. Enquiry officer was appointed. It is the case of the workman that inquiry officer has submitted the finding ignoring the deposition of the witness and rules of evidence and against the principle of natural justice. The inquiry report is full of perverseness as the same is not based on the documentary evidence and oral evidence recorded during the domestic inquiry. It is alleged by the workman that documents which were very relevant to the case have not been allowed to be placed by the inquiry officer who was acting and obeying the directions of the presenting officer. The inquiry officer though the charges were not proved as per the record and documentary evidence but the inquiry officer goes out of way to prove four charges partially, two charges fully against the workman. The inquiry report of the inquiry officer is full of contradictions and against the recorded evidence and other material on the record. The workman during inquiry try to place the relevant document to the charges on record but not allowed to be placed by the inquiry officer giving flimsy reason. The Disciplinary Authority also fail to apply its mind and without caring of canon of justice, passed the order of compulsory retirement of the workman, without segregating the charges. Being aggrieved to the order of the Disciplinary Authority, the workman filed appeal to the appellate Authority and after giving personal hearing to the workman wrote a letter to the Head Office with copy to the CVO proposing his reinstatement with same financial punishment vide letter to be CZO/PSD/VIG/196 dated 23-7-2010 but the CVO did not agree with the suggestion and under the influence of CVO, the Appellate Authority passed the order of the compulsory retirement of workman from service without application of his own mind. Therefore the, same is against the principle of natural justice. The workman assails the inquiry by alleging that workman was not allowed to examine

the witnesses which appeared in the charge-sheet and list of witnesses of the management. The inquiry officer also not record nor marked the documents filed by the workman during inquiry. The inquiry officer while submitting the report not considered the relevant deposition of Senior Manager Sh.S.K.Gupta as MW 1 of the Budhakhera Branch where the workman was posted. Although Sh. S.K.Gupta was the Senior Manager of the Branch yet he did not support the charges levelled against the workman, still the inquiry officer goes further to prove the charges during inquiry in his report, which is against the rule of evidence and which shows perversity on part of inquiry officer. Mr. S.K .Gupta Senior Manager of the Bank issued many letters to the workman which shows that the workman was instrumental in bringing deposits for different branches such as Budhakhera, Jind, Kapro, Rohtak, Panchkula for several crores. These facts are on record but completely overlooked/ignored while submitting the findings which shows his closed mind and based approach. The inquiry officer fail to apply his mind while submitting the inquiry report and took into consideration the extraneous factors while submitting the inquiry report, Which made entire domestic inquiry proceedings vitiated and his finding perverse. It is also alleged by the workman that charges framed against the workman on clause 5(1) of the bipartite settlement has no relevance with the charges and the charges itself are vague. Disciplinary Authority also failed completely in providing the opportunity of hearing and application of mind in imposing the punishment. It is also pleaded by the workman that there are Co-operative T &C Societies and each States has on Co-operative Society at employees of the bank have formed co-operative society relating to credit, housing, etc. No permission from the employer is necessary. Moreover, the signatory are the office bearer who are elected by the members and operate the accounts as per byelaws of the society. As stated earlier appellate authority also did not apply mind independently and acted with closed mind and on the direction of CVO passed the orders in appeal. The appellate Authority also made the point against the workman that he did not submit the documents regarding members of the society but ignored this fact that workman was not allowed to place any document on record by the inquiry officer himself vide order dated 8-2-2010 during inquiry. It is pleaded by the workman that as the inquiry officer did not conduct the inquiry fairly and properly and in accordance with the principle of natural justice, the same inquiry is liable to be declared vitiated being one sided. Disciplinary authority and appellate authority has also not applied their minds properly. It is prayed that inquiry may be declared vitiated and workman may be allowed to be reinstated in service with full back wages and other service benefits.

3. The management filed its written statement and denied the assertions of the workman in his claim statement. It is pleaded by the management that compulsory retirement from service with superannuation benefits penalty was imposed by taking a lenient view. It is pleaded by the management that it is proved that irregularities were committed by workman while working as Special Assistant. During inquiry, it is proved that workman was acting against the interest of the bank. It is admitted that he was elected as State Secretary and General Secretary of the Union. The Competent Authority awarded the punishment taking a lenient view in accordance with the rules and regulations of the Bank. Even evidence of MW 1 S.K.Gupta well proved the charges against the workman. It is denied that inquiry officer has submitted inquiry report under the influence of the presenting officer. The report of the inquiry officer dated 23-6-2010 is based on material and evidence available on record which is well-reasoned and justified. The disciplinary authority and appellate authority has also taken action on the basis material and evidence on record and there is no infirmity in the report and order of the management retiring the workman compulsory with superannuation benefits. It is prayed that dispute may be dismissed with cost.

4. The workman filed replication to the written statement reiterating the claim made in the claim statement. In support of his case, the workman also filed affidavit along with documents, affidavit filed by the workman almost on the same lines as that in the claim statement and rejoinder. Management also placed on record the copies of complete inquiry proceedings. The workman also placed on record the documents which he alleged that the same were not accepted during inquiry proceedings and which are very relevant to the present case.

5. I have gone through the record, pleadings of the parties, entire inquiry proceedings, documents placed on the record by the workman and the management. Arguments have been heard on behalf of the workman and the management through their learned representative Sh. B.Prasad and Sh. S.C.Monga respectively.

6. Sh. Prasad learned representative of the workman submitted that workman was placed under suspension on 16-7-2009 without any reason and he was later on served the charge-sheet and the main allegation in the charge-sheet related to joining co-operative society, diversion on funds. It is submitted by the learned representative of the workman during arguments that as per agreement between Indian Banks Associations with the Indian Banks Employees Association, every bank has Thrift and Credit society and there is no need for any permission to join any co-operative society and become office bearer of the so-called co-operative society. Therefore, there is no force in the allegation of the management that the workman joined any co-operative society and become member of the same and office bearer of the society. There is not even an allegation from any customer of the bank alleging diversion of funds by the workman to any other agency. It is specifically pleaded and submitted during arguments on behalf of the workman that bank itself had issued several appreciation letters to the workman who was instrumental for deposits of the bank had various branches such as Parliamentary Street Branch, Delhi, Panchkula, Jind and Budhakhera which speaks itself and also available on the

record of the bank. The workman was not allowed to place on record the documents by the inquiry officer vide his order dated 8-2-2010. During inquiry MW 1 S.K.Gupta who was appeared on be half of the management has categorically stated in evidence that many letters of appreciation were issued for work of the workman for bringing the deposits and promoting the business of the bank. But strangely enough the inquiry officer did not consider the evidence of MW1 S.K.Gupta and went on to prove the charge which was unfounded.

7. It is further argued by the learned representative on behalf of the workman that no document was supplied to the workman along with the charge-sheet and when it was brought to the notice of the inquiry officer that documents were not supplied, the inquiry officer himself failed to supply the document and the same were denied to the workman, which is gross violation of principle of natural justice, equity and fair play in conducting the inquiry and against the well-settled principle of law. Thus, great prejudice has been caused to the workman in as such as the workman was denied the reasonable opportunity of defence during inquiry. It has also been submitted by the learned representative of the workman during argument that the workman submitted the list of defence witnesses as their name appeared in the charge-sheet. For the reasons best known to him, the inquiry officer dis-allowed the workman to examine his witnesses for their deposition. By not allowing the workman to examine his witnesses in his defence during inquiry, opportunity has been denied to the workman by the inquiry officer and on this ground alone the inquiry can be vitiated as prejudice has been caused to the workman as defence was not allowed which is against the principles of natural justice.

8. It is further submitted by the representative on behalf of the workman that inquiry officer also mark the document without getting the same proved during inquiry and these documents cannot be considered in the inquiry. In this way the inquiry officer was acting in biased manner and was following the dictates of the presenting officer and disciplinary authority. The inquiry officer has not conducted the inquiry in a fair and proper manner and goes on to deny the reasonable opportunity to the workman of defence during inquiry. He failed to discharge the duty of the quasi-judicial authority, therefore, the inquiry may be declared as vitiated.

9. It is further; submitted during arguments that as the findings of the inquiry are perverse being not based on the evidence recorded and documents filed during inquiry, therefore, the inquiry report is perverse and the same is liable to be vitiated in toto. The inquiry officer also travelled beyond its subject as he with some extraneous reasons gave a finding that workman cheated a public institutions whereas, there was no such charge in the charge-sheet.

10. The role of disciplinary authority is also deplorable being he has not applied its mind while awarding the punishment and concurring with the finding of the inquiry officer in the inquiry report, which was based on no evidence and against the facts and documents produced on record during the inquiry proceedings. The disciplinary authority acted with closed mind and with biased approach at every stage from the issuance of charge-sheet, concurring with the finding of the inquiry officer, and passing final order. The appellate authority in appeal also was not exercising his authority on his own but he was following the direction of the CVO. At one point of time the learned appellate authority was not agreeable to the punishment awarded. Later on the punishment awarded of compulsory retirement. It is further pleaded that he has to bow under external pressure of CVO and changed his mind under his pressure. It is also argued that the workman was punished to curb his Trade Union activities as he happens to be States Secretary of the UCO Bank Employees Association and General Secretary of the Employees Bank Federation Haryana.

11. The management bank also filed written arguments. The learned representative of the management also orally submitted that the lenient view was taken while awarding punishment to the workman and there was no shortcoming' in the inquiry. It is submitted by the representative of the management that during inquiry, it is proved that the workman was indulged in parallel banking and he has not obtained permission from controlling office to operate the society account and he was engaged in heavy and multiple transactions. It is also submitted during arguments by learned representative of the management that on previous occasion, the workman issued show cause notice in the year 2001 for disobeying the lawful order issued by the Senior Manager and on apology of workman , and assurance of good conduct in future, he was given punishment of censure. Show-cause notice and final order was also filed on the record.

12. I have gone through all the material on record and arguments. Main issue in this case is that, "whether the departmental enquiry against the workman was conducted in a fair and proper manner following the principles of natural justice?

13. Workman sebmitted that the management placed him under suspension on 16-7-2009 without issuing any show-cause notice. The management, thereafter, issued show cause notice to the workman dated 14-8-2009. Vide memo dated 14-8-09, the management sought workman's explanation on the allegations mentioned in the office memo. Workman submitted his explanation. Thereafter, the management issued charge sheet dated 9-11-2009. Workman replied to the charges levelled against him. Workman submitted that before placing him under suspension, no show cause notice was issued to him. Photocopy of departmental enquiry file was placed. on record by the management. During enquiry only one witness Shri S.K.Gupta Branch Manager Budhakhera Branch was examined as MW1. On perusal of the departmental enquiry file it reveals that workman submitted a list of witnesses and list of documents seeking permission to file in workman's defence but the same was not allowed by the

enquiry officer. Workman cited case law Union of India & Others Vs. Mohammed Ramzan Khan 1991 AIR 471, LIC of India and others Vs. Ram Pal Singh 2010(3) SC 137. Workman also cited Rajendra Jha Vs. Presiding Officer Labour Court, Bakaro Steel City Dhanbad and another 1985(1) S.C.R. 544, Delhi Cloth and General Mill Company Vs. Ludh Budh Singh 1972(3) SCR 29. In these case laws Hon'ble Supreme Court has given a finding that if the enquiry has not been conducted in fair and proper manner and without following the principle of natural justice, the workman should not be subjected to punishment. It is also settled law that when a domestic enquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the findings on the preliminary issue is against the management. In such a case if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead evidence contra. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of before the proceedings were closed, the employer can make no grievance that the Tribunal did not provide for such an opportunity. In the case in hand, there is no such request of the management to decide the issue of enquiry as preliminary issue up to the close of the proceedings. During enquiry workman requested that the enquiry be conducted at Budhakhera Branch because place of enquiry i.e. Ambala City is far off from Budhakhera Branch and it would be difficult for the workman to bring his witnesses at Ambala City. As stated above, enquiry officer denied the examination of defence witnesses also denied the filing of documents. Thus, the workman did not get a fair and proper opportunity to explain his conduct and greatly prejudiced in his defence.

14. From the above discussion it is clear that the enquiry was not conducted in fair and proper manner and the workman was denied the valuable right to defend himself as he was not allowed to lead his defence.

15. So far the charges levelled against the workman are concerned, the management's witness Shri S.K.Gupta MW/1 in his statement during enquiry stated that management witness has no power to sanction OD of Rs.2,40,000 to Haryana Co-operative Non-Agriculture Thrift Society Ltd. Management's witnesses in this context also replied that management witness granted OD to the society without any pressure from charge sheeted employee. In context of another charge, the management's witness has stated before the enquiry officer that to his knowledge, there was no such provision to seek permission from higher authorities to open and operate to society account by the staff member. To another question, MW stated that he does not remember whether any objection was raised by inspection audit of the branch. Management's witness stated before the enquiry officer that he (MW) not noticed that charges sheeted employee canvassed society business while sitting in the branch. Besides this, MW clearly stated that he (MW) recommended the name of the workman for appreciation letter.

16. Bank managementissued letter dated 13-2-1989, 25-8-2009, 22-9-2009, 19-3-2010, 31-3-2010 appreciating the work and conduct of the workman. Workman submitted that he was elected State Secretary of the UCO Bank Employees Association and General Secretary of the Employees Bank Federation Haryana and he used to pursue the right causes of the bank employees and that is why the management got annoyed and subjected the workman to this punishment. A letter sent by Chief Officer Vigilance to Deputy General Manager, Zonal Officer Chandigarh bearing No.HO/Vig.ZO/Chan/1400/2010-11 dated 2-9-2010 has been placed on record. In this letter Chief Officer (Vigilance) mention as under:—

"do not concur with the view of the appellate authority"

17. This also shows that the appellate authority was not exercising his jurisdiction independently.

18. During enquiry except MWI S.K.Gupta no other witness was examined by the management to substantiate the charges levelled against the workman and his statement failed to prove the charges against the workman. From the charge sheet, itself and from the reply by the workman, the charges are vague and are not specific.

19. From the above discussion, I am of the view that enquiry conducted against the workman is against the principle of natural justice and not conducted fairly and properly. The workman was not given the opportunity to defend himself during the enquiry as he was denied the reasonable opportunity of defence. The enquiry is thus vitiated and the order dated 25-5-2010 of the disciplinary authority and order dated 9-9-2010 of the appellate authority are liable to be quashed.

20. As discussed above, since the management has not availed the opportunity at any stage during the proceedings for proving the charges by giving them the opportunity to prove the charges, therefore, it is held that workman is entitled to be reinstated in service with full back wages and all consequential benefits of service.

21. In view of the above, the action of the management of imposing the punishment of compulsory retirement from service with superannuation benefits upon Shri R.S.Attari, Ex-special Assistant vide order dated 25-5-2010 is illegal and unjustified and the workman is entitled to be reinstated in service with full back wages and other consequential benefits of service subject to adjustment of subsistence allowance and superannuation benefits if any received by the workman. The reference is answered accordingly. Central Govt. be informed.

Chandigarh
27-2-2012

S.P. SINGH, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 317 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/04/2010-11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-01-2013 को प्राप्त हुआ था ।

[सं. एल-12011/12/2010-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/04/2010-11) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 9-01-2013.

[No. L-12011/12/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/04/2010-11

Date : 24-12-2012

Party No. 1

Regional Manager,
Central Bank of India, Oriental Building,
LIC Square, Kamptee Road,
Nagpur.

Versus

Party No. 2

The Secretary,
Bank of Maharashtra Employees Association,
C/o. Bank of Maharashtra,
Regional Office, Opp. Police H.Q.
Mul Road,
Chandrapur- (MS)

AWARD

(Dated: 24th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workman, Shri S.B. Shende, for adjudication, as per letter No.L-12011/12/2010-IR (B-II) dated 17-05-2010, with the following schedule :—

> "Whether the action of the management of Central Bank of India in respect of Shri S.B. Shende, PTSK, Wani Branch, Yavatmal in denying promotion/ absorption as Full time Safai Karmachari (FTSK) is legal & justified? What relief is the concerned workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri S.B. Shende, ("the workman" in short), filed the statement of claim and the management of Central Bank of India, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was initially appointed as a part time permanent employee w.e.f. 1-06-1978 by party no. 1 and was posted in Maregaon branch and while he was working as such, he was dismissed from services, as a punishment imposed in the Disciplinary proceeding initiated against him by the party no. 1 and the order of dismissal was challenged by the workman before the labour authorities and consequently, the matter was referred to the Central Government Industrial Tribunal ("CGIT" in short), Mumbai and an award was passed on 19-01-1996 by the CGIT, Mumbai in favour of the workman, as a result of which, the workman came to be reinstated in service w.e.f. 1-03-1996 and one of the terms of the award was to give all the benefits of notional seniority for the purpose of promotion, but surprisingly, the party no. 1 denied promotion to the workman to the post of full time sub-staff and many juniors to him were promoted superseding his seniority and infact, the workman was entitled for promotion and ought to have been promoted to the post of full time sub-staff right from the year, 1999 and one post of full time sub-staff was available at Ladkhed branch due to transfer of one Shri Madavi and another post of full time sub-staff was available at Wani branch, because of transfer of Shri Chichghare and Shri S. K. Hanwate, part time safai Karmachari, Wani and Shri B. S. Amle, whose date of appointment were 1-01-1990 and 1-01-1985 respectively and who were juniors to the workman in service were promoted to full time sub-staff w.e.f. 7-08-1999 and 23-12-1999 and posted to Wadhona Bazar and Ladkhed branch respectively and one Shri R. P. Magarde of Shivajinagar Branch, Amravati, who was appointed on 20-06-1986 and junior to the workman was promoted w.e.f. 21-05-2010 and was posted to Dhamangaon Branch and since the reinstatement of the workman in service, the

party no. 1 was showing a unfair treatment against the workman and the trade unions also did not listen to his grievance and the employees of the Central Bank of India passed resolution to support the cause of the workman and the other registered trade union operating in Bank of Maharashtra came to his rescue and raise the dispute on his behalf.

The union has prayed to declare the action of party no.1 in denying the workman promotion and promoting the junior employees as improper and unjust and to give the workman promotion as full time sub-staff from the date on which he was superseded by his juniors and to pay arrear of wages and all consequential benefits to him.

3. The party no.1 in their written statement have pleaded inter-alia that the workman has already been absorbed in the post of full time safai karmachari-cum-sub-staff w.e.f. 01-04-2011, by order dated 13-04-2011 and in such circumstances, the cause of action raised in the reference does not survive anymore and therefore, the reference is liable to be disposed of as in fructuous.

The further case of party no. 1 is that the workman was initially appointed as 1/3 rd part time safai karmachari ("PTSK" in short) w.e.f. 1-06-1978 and he was dismissed from service on 29-09-1995 after conducting departmental enquiry and the workman challenged his dismissal from services in a proceeding, which was culminated in a reference before the C.G.I.T. No.2, Mumbai (wrongly mentioned as CGIT, Nagpur in the written statement) and an award was passed in the matter on 19-01-1996 on mutual consent of the parties and interms of the award, the workman was reinstated in service as 1/3rd PTSK w.e.f. 1-03-1996 alongwith 50% back wages for the period from 27-09-1985 to 1-03-1996 and he was also granted promotions as 1/2 PTSK and 3/ 4th PTSK at Wani branch w.e.f. 18-11-1999 by taking into consideration his date of appointment and by giving the benefit of notional seniority in tune with the terms of the Award dated 19-01-1996.

The party no. 1 have further mentioned in the written statement that, "All adverse allegations made in the statement of claim filed by the workman, which are not consistent with the submissions made here in above are denied."

The further case of the party no. 1 is that as the workman has failed to make out a case of intervention of the Tribunal, the reference is therefore, required to be decided against him.

4. Both the parties in order to prove their respective claims, besides placing reliance on documentary evidence, have led oral evidence. The workman has examined himself as a witness in support of his claim. One Shri Vilas Laxman Ailawar has been examined as a witness by the party no. 1.

5. In his examination-in-Chief, which is on affidavit the workman has categorically stated that he was Promoted to FTSK-Cum-sub-staff w.e.f. 1-04.2011 and posted at Wani branch and he joined in the promotional post on 18-04-2011 and as per the award dated 19-01-1996, he was expecting his promotion to the post of FTSK on the basis of region/ District seniority but he was superseded by his juniors, Shri S.K. Hanwate and Shri B.S. Amle, who were given promotion as FTSK on 7-08-1999 and 23-12-1999 respectively and he was appointed w.e.f. 1-06-1978, where as Shri Hanwate and Shri Amle came to be appointed in 1984 and 1-01-1985 respectively and he is entitled to be promoted as FTSK from the date of which his juniors were given promotion.

Though, the workman has been cross-examined at length about the previous reference and the admitted facts regarding the award dated 19-01-1996, his assertion that he was superseded by Shri S.K. Hanwate and Shri B.S. Amle, who were juniors to him has not at all been challenged.

6. The witness for the party no. 1 was reiterated the facts mentioned in the written statement, in his evidence on affidavit. However, in the cross-examination, this witness has stated that he cannot say if Shri S.K. Hanwate and Shri B.S. Amle were juniors to the workman and if after the reinstatement of the workman in service, Shri Hanwate and Shri Amle were given promotion as full time safai karmachari superseding the workman. So, the evidence of the witness examined on behalf of the party no. 1 is of no help to decide the issue involved in the reference.

7. At the time of argument, it was submitted by the learned advocate for the party no. 1 that the reference is in regard to the denial of promotion to the workman as full time safai karmachari and as it is admitted by the workman that he has already been given promotion as full time safai karmachari -cum-sub staff w.e.f. 01-04-2011, the industrial dispute does not exist anymore, hence the reference is to be disposed of as in fructuous. It was further submitted that as per the terms of the award dated 19.01.1996, the workman has been given all the benefits including promotion, and hence he is not entitled to any relief.

8. Per contra, it was submitted by the learned advocate for the workman that the reference has been made for adjudication of the dispute for denying promotion to the workman by taking into consideration of his notional seniority as ordered by the award passed by the CGIT, Mumbai dated 19-01-1996 and as such, the industrial dispute still exists for adjudication and as the workman has been superseded by his juniors without any reason, the workman is entitled for promotion to FTSK from the date of the promotion of his juniors and to get the arrears of wages and on other consequential benefits due to such benefits.

9. It is necessary to mention here that though the party no. 1 has pleaded in the written statement that all adverse allegations made in the statement of claim which are not consistent with the submissions made in the written statement are denied, there is no specific denial of the claim made by the workman in paragraph 6 of the statement of claim that Shri S.K. Hanwate, Shri B.S. Amle and Shri R.P. Magarde, who were juniors to him were given promotion as FTSK by superseding him, on 07-08-1999, 23-12-1999 and 21-05-2010 respectively.

The assertion of the workman made in his evidence on affidavit in this regard has also not been challenged in the cross-examination.

It is clear from the copy of the award dated 19-01-1996, passed by the CGIT Mumbai-II that direction was given to take the date of appointment of the workman in the Bank for the purpose of seniority notionally, only for future promotions to 1/2 PTSK, Full time safai karmachari of sub-ordinate staff or clerk. It is also clear from the documents and other materials on record that Shri S.K. Hanwate, Shri Amle and Shri Magarde, who were juniors to the workman were given promotion to full time safai karmachari by superseding the workman, after the reinstatement of the workman in service,without any reason of denying promotion to the workman.

In view of the materials on record and the discussion made above, it is held that the workman is entitled for promotion to the post of full time safai karmachari from the date of promotion of Shri S.K. Hanwate i.e. w.e.f. 07-08-1999. Hence, it is ordered:

ORDER

The action of the management of Central Bank of India in denying promotion/absorption of the workman as full time safai karmachari is illegal and unjustified. The workman is entitled for notional promotion to the post of full time safai karmachari w.e.f. 07-08-1999, the date on which, his junior, Shri S. K. Hanwate was promoted and the workman is entitled to get all the arrears of wages and other consequential benefits w.e.f. 07-08-1999 due to such notional promotion.

The party no. 1 is directed to comply the directions within one month from the date of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 65/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-41012/99/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O.318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workman, which was received by the Central Government on 11-01-2013.

[No. L-41012/99/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Dated 6-12-2012

No. CGIT/NGP/94/2007

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 :

The Sr. Divisional Commercial Manager,
South East Central Railway,
Nagpur Division,
Nagpur (MS).

V/s

Party No. 2 :

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony,
Nagpur-30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Jitendra Domaji Rangari for adjudication, as per letter No.L- 41012/99/2005-IR(B-I) dated 14-11-2007, for adjudication with the following schedule :—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration ? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Jitendra Domaji Rangari, Parcel Porter, w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या 40/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-12011/19/2011-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O.318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2011) of the Central Government Industrial Tribunal-cum-Labour Court, No.2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 11-01-2013.

[No. L-12011/19/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/40 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

The Assistant General Manager
State Bank of India, Local Head Office
Human Resources Department
Synergy Plot No.C-6, G-Block
Bandra Kurla Complex
Bandra (E)
Mumbai - 400 051.

AND

THEIR WORKMEN

The Vice President
Maharashtra Navnirman Kamgar Sena
Arjun Khetwadi,
Gr. Floor BMC
Parking Plaza Building
Dadar (W)
Mumbai - 400 028.

APPEARANCES :

For The Employer : Mr. M. G. Nadkarni, Advocate.

For The Workmen : No appearance.

Mumbai, dated the 22nd October, 2012

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/19/2011-IR (B-1),

dated 27-07-2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of State Bank of India, Mumbai in terminating the services of S/Sh. Umesh Mohit Dattaram L. Patkar, Shrikant Kolhikan and Shripath Kambli ex-casual sweepers w.e.f 18-10-2010 is legal and justified? To what relief the workman is entitled?"

2. After receipt of the reference, notices were issued to both the parties. Second party was duly served with notice. Registered AD receipt to that effect is at Ex-4. The second party workmen/union appeared before this Tribunal for first 2 / 3 dates and sought adjournment. Thereafter matter was adjourned on several dates but second party remained absent and did not file their statement of claim. Without Statement of claim, the reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 22-10-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 94/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-41012/68/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O.320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workman, received by the Central Government on 11-01-2013.

[No. L-41012/68/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/94/2007

Dated 6-12-2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 :

The Sr. Divisional Commercial Manager,
South East Central Railway,
Nagpur Division,
Nagpur (MS).

V/s

Party No. 2 :

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony,
Nagpur-30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Ram Krushna Bohre, for adjudication, as per letter No.L-41012/68/2005-IR (B-I) dated 19-11-2007, for adjudication with the following schedule :—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration ? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Ram Krushna Bohre, Parcel Porter, w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written

statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nore written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ.321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 25/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/19/2002-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S. O.321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2002) of the Central Government Industrial Tribunal-cum-Labour Court-1, Asansol as shown in the Annexure in the Industrial Dispute between the management of 7/9 Pit of Chhora Colliery, Kendra Area of M/s. ECL and their workmen, received by the Central Government on 11-01-2013.

[No. L-22012/19/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: SRI JAYANTA KUMAR SEN, Presiding Officer

REFERENCE NO. 25 OF 2002

PARTIES:

The management of 7/9 Pit Chora Colliery,
M/s. ECL, Burdwan

Vs.

Shri Azad Turi,
Changardi,
Jamtara(Jharkhand)

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Ld. Advocate
For the union (Workman) : None
INDUSTRY: COAL
STATE: WEST BENGAL.
Dated -13-12-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/19/2002-IR.(CM-II) dated 08-08-2002 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of 7 & 9 pits of Chora Colliery, Kenda Area of M/s. Eastern Coalfields Limited, in dismissing Shri Azad Turi, Underground Loader from service is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/19/2002-IR(CM-II) dated 08-08-2002 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 25 of 2002 was registered on 20-08-2002 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been noticed that the workman is neither appearing nor taking any step since long. It seems that the workman is not interested to proceed with the case any further. Hence, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 322 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (आईडी संख्या 84/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/338/2003-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Chandrapur Area of Western Coalfields Ltd. and their workmen, received by the Central Government on 11-1-2013.

[No. L-22012/338/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/84/2004

Date: 26-12-2012

Party No.1 : The Chief General Manager,
Chandrapur Area of WCL,
Post & Distt.: Chandrapur (MS).

Versus

Party No. 2 : Shri S.H. Beg, President,
Lal Zanda Coal Mines Mazdoor Union
(CITU), Durgapur Open Cast Project,
Durgapur Open Cast Colony,
Qtr. No. M-305, PO. Durgapur,
Distt. Chandrapur (MS).

AWARD

(Dated: 26th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and Smt. Mallubai, the dependent of their deceased workman, for adjudication, as per letter No. L-22012/338/2003-IR (CM-II) dated 17-08-2004, with the following schedule:—

"Whether the action of the management of Western Coalfields Ltd., in denying employment to Smt. Mallubai W/o Late Odelu Mukkamwar, as dependent of Late Odelu Mukkamwar in terms of provisions under NCWA-V is legal and justified? If not, to what relief is the workman entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zanda Coal Mines Mazdoor Union" ("the union" in short), filed the statement of claim on behalf of the applicant, Smt. Mallubai ("the applicant" in short) and the management of WCL, ("Party No. I" in short) filed its written statement.

The case of the applicant as presented by the union is that the party no. 1 is a public sector undertaking and a subsidiary of Coal India Limited, the apex public sector company and it (the union) is a registered trade union functioning in WCL and Odelu Mallaiah Mukkamwar, the deceased husband of the applicant was employed as a loader in Mine no. 3 of Hindusthan Lalpeth UG mine and while he was in employment with party no. 1 he expired on 19-04-1998, leaving the applicant and a minor daughter as his dependents and after the death of her husband, the applicant made an application for employment in terms of the scheme framed under the National Coal Wage Agreement -V ("NCWA-V" in short) and there is provision in NCWA-V that in case of death/total permanent disablement due to cause other than mine accident, if the female dependent is below the age of 45 years, she will have the option of either to accept the monetary compensation or employment and the applicant was is left with no other means or source of income to pull the family together and in order to shoulder the burden of the family, it was absolutely necessary for her to have employment, but party no.1 vide letter dated 16/18-01-2001 intimated her that she is only entitled to apply for monetary compensation of Rs. 3000 per month and not for employment and on receipt of the said communication, the applicant expressed her unwillingness to accept monetary compensation in lieu of employment and the date of birth of the applicant is 13-05-1958 as per the certificate issued by Chandrapur Nagar Parishad, Chandrapur and she was about 40 years old, when she approached the party no. 1 for employment in the year 1998, and she was entitled for employment as per the provision of clause 9.5.0 of NCWA-V and though she made fervent appeal to party no. 1 for reconsidering their decision and to give her employment, party no. 1 failed to reconsider the issue and insisted for accepting monetary compensation of Rs. 3000 per month and the failure on the party of party no. 1 to provide employment to the applicant runs counter to the specific provision made in NCWA and implementation instruction no. 8 issued by Coal India Limited and the applicant is entitled for employment.

Prayer has been made by the union to direct the party no. 1 to provide employment to the applicant in any suitable post in terms of the provision of NCWA-V.

3. The party no. 1 in their written statement have pleaded inter-alia that the service conditions of the employees working with them are governed mainly by the NCWA and the instant reference made by the Central Government for a decision under NCWA-V is totally misconceived and in fructuous, as NCWA-V was in operation from 01.07.1991 to 30.06.1996 and the deceased workman died on 19.04.1998, when NCWA-VI was in operation and therefore, the reference is not maintainable in the eyes of law and in case, the case of the applicant will be decided under the NCWA-V, it will create a serious repurcation and will have a very wide adverse effect on industrial relations and the Tribunal cannot travel beyond the terms of reference.

The further case of party no.1 is that workman, Odelu Mukkamwar was in their employment as a loader and he died on 19.04.1998 in harness and the applicant submitted her request for employment as the dependent of the decease workman and every employee in service is required to furnish his family details for the purpose of family pension under E.M.P.F. and such declarations are statutory and the deceased workman gave the declaration in Form - 2 of the Coal Mines Family Pension Scheme on 19-06-1988 duly witnessed by two persons and in the said declaration, he had mentioned the age of his wife to be 35 years and subsequently, when his service excerpts were communicated to him as was done in cases of all other employees, the deceased workman confirmed the age of his wife to be 35 years in 1989 and for availing leave Travel concession under the provision of NCWA, the deceased workman had declared the age of his wife as 44 years on 14-08-1996 and form the records, it is evident that when the deceased employee died in the year 1998, his wife was alreay above the age of 45 years and when the application of th applicant was examined, it was found that she was not entitled for employment and she could only obtain monetary compensation in terms of NCWA-VI and such reply was also given to the union, which has espoused the cause and the applicant submitted some documents in proof of her age, but the age recorded in those documents was not only contradictory, but also appeared to be manipulated, therefore, no reliance was put on the same and the action taken by them is legal and justified.

4. The union has examined S.H. Baig, the President of the union and the applicant as the two witnesses in support of their case. In their evidence on affidavit, they have reiterated the facts mentioned in the statement of claim.

In his cross-examination, S.H. Baig has admitted that NCWA-VI came into force on 01-07-1996 and the deceased workman died on 19-04-1998 and at the time of death of the workman, NCWA-VI was in force.

The applicant in her cross-examination has stated that she is illiterate and she was born in village, Ashnd under Chhena Mandalam and Adilabad District of Andhra Pradesh and she cannot say her date of birth.

5. One Shri Bhagwan Tukaram Katare has been examined as a witness on behalf of the party no. I. In his evidence, this witness has reiterated the facts mentioned in the written statement. This witness has also proved the personal details and the information submitted by the deceased workman as Ext. M-III and M-IV respectively. In his cross-examination, this witness has admitted that in Ext. M-III, the age of the applicant has been mentioned as 35 years as on 18.09.1989 and if the said age is taken into consideration, then on 19-04-1998, her age was below 45 years.

6. At the time of argument, it was submitted by the learned advocate for the union that as the applicant, Smt. Mallubai, the dependent and widow of the deceased workman, Odelu Mukkamwar was below 45 years of age at the time of the death of her husband i.e. 19-04-1998, she is entitled for employment as per the provisions of clause 9.5.0 of NCWA-VI, which was operative at the time of death of the deceased workman, so the action of party no. 1 in denying employmen to the applicant is illegal.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that on 19.04.1998, the date of the death of the workman, NCWA-VI was in operation and as the reference has been made for adjudication of the dispute raised by the applicant as per the provision of NCWA-V, which was already been substituted by NCWA-VI, the reference is not maintainable in law. It was further submitted that it is clear from the materials on record that the documents filed by the applicant in support of her age are not only contradictory to each other, but also appear to be manufactured and it is clear from the documents produced by the party no. 1, that the applicant was more than 45 years of age not only on the date of her application for employment, but also, on the date of death of her husband and as such, she was not entitled for employment and she was entitled for monetary compensation of Rs. 3000 per month as per the provisions of clause 9.5.0 of NCWA-VI and as such, the rejection of the application of the applicant for compassionate employment by party no. 1 was justified.

8. In this case, all most all the facts are admitted by both the parties, except the age of the applicant. No doubt, on 19-04-1998, the date of the death of the deceased workman, NCWA-VI was in operation, so the reference should have been made to decide the dispute as per the provision of NCWA-VI, instead of V. However, it is to be

mentioned, here that the provisions of clause 9.5.0 of NCWA-V and VI are para materia to each other. So it can be considered as to whether the applicant is entitled for the relief under the provisions of NCWA-VI.

9. The applicant has produced one certificate grarnted by the medical officer, Chandrapur General Hospital, according to which she was 38 years of age on 12-07-2004. By taking the age of the applicant as mentioned in the said certificate, it can be found that her year of birth is 1966 and not 13.05.1958 as claimed by her in the statement of claim. In order to show that her date of birth is 13-05-1958, the applicant has produced a zerox copy of birth certificate issued of the Nagar Parishad, Chandrapur. On perusal of the said certificate, it was found that the same was prepared on 16-09-1999 i.e. after the death of the deceased workman. The applicant in her evidence has stated that she cannot say her date of birth and she did not go to Chandrapur to obtain the birth certificate and she was born in village Ashual of Adilabad district of Andhra Pradesh. So, it is clear that the birth certificate produced by the applicant is not a genuine certificate and no reliance can be placed on the same.

10. On the other hand, Ext. M-IV shows that the deceased workman had mentioned the age of her wife, the applicant as 44 years on 14-08-1996. Likewise, the workman had also confirmed the year of birth of the applicant, as 1954 as per the document, Ext. M-II. Ext. M-III and M-IV are documents submitted by the deceased workman prior to raising of dispute and as such, reliance can be placed on the said documents. The contents of the documents, Exts. M-III and M-IV show clearly that the applicant was more than 45 years of age on the date of death of her husband i.e. 19-04-1998 and she was not entitle for employment as per clause 9.5.0 of NCWA-VI and therefore the refusal of the party no. 1 to give her employment is justified. However, it is clear from the materials on record and pleadings of the parties that the applicant is entitled for monetary compensation as provided in clause 9.5.0 from the date of her application for employment. Hence, it is ordered:—

ORDER

The action of the management of Western Coalfields Limited in denying employment to Smt. Mallubai W/o. Late Odelu Mukkamwar as his dependent is legal and justified. However, Smt. Mallubai is entitled for monetary compensation as per the provisions of. clause 9.5.0 of NCWA-VI (and not of NCWA-V as mentioned in the schedule of reference) from the date of her application for giving her employment. The management of Western Coalfields Ltd. is directed to carry out the award within one month from the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (आईडी संख्या 75/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1 2013 को प्राप्त हुआ था।

[सं. एल-22012/304/2005-आई आर (सीएम II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O.323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 75/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Pipla Mines of Western Coalfields Limited, and their workmen, received by the Central Government on 11-1-2013.

[No. L-22012/304/2005-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/75/2006

Date: 24-12-2012.

Party No.1 : The Mines Manager,
Pipla Mines of Western Coalfields Limited, PO: Pipla, Tq. Saoner, Distt. Nagpur.

: The Chief Security Officer,
Western Coalfields Limited, Head Quarter, Coal Estate, Civil Lines, Nagpur-1.

Versus

Party No.2 : Shri Harichand Dhonabaji Khadse, R/o. Balabhau Peth Near Mata Mandir, Kamal Chowk, Nagpur.

AWARD

(Dated: 24th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947(14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Harichand

Khadse, for adjudication, as per letter No.L-22012/304/2005-IR (CM-II) dated 05-10-2006, with the following schedule :—

> "Whether the action of the management of Western Coalfields Limited in dismissing the services of Shri Harichand Dhonbaji Khadsh w.e.f. 3-2-2004 is legal and Justified ? If not, to what relief the workman is entitled ?"

2. After receipt of the reference, both the parties were noticed to file the statement of claim and written statement and in response to such notice, the workman Shri Harichand Khadse, ("the workman" in short) filed the statement of claim and the management of WCL ("Party no. 1" in short) filed their written statement.

3. The case of the workman according to the statement of claim is that he was in the employment of the management of WCL as a Security Guard from 3-3-1980 and he was promoted and posted in May, 1998 at Majri Area Mines, Chandrapur and after working for about four years, he represented for his transfer to Pipla Mines and accordingly, in the month of June, 2002, he was transferred to Pipla Mines and on 30-5-2003, he proceeded on sick leave and after availing sick leave, on 23-6-2003 at 1.00 p.m., when he went to resume his duty, he was served with the order of suspension-cum-charge sheet dated 6-6-2003 alongwith the letter of appointment of the: Inquiry Officer by the management and he was not supplied with any document alongwith the charge sheet. The further case of the workman is that he approached the INTUC union with his grievance and the Joint General Secretary of the union, Shri Sharma was appointed as his co-worker in the departmental proceeding and the departmental proceeding was not done by following the principles of natural justice an the Presenting Officer from the side of the management was examined as a departmental witness and at the end of the cross-examination of the said witness, the Inquiry Officer asked him to produce documents and the procedure adopted by the Inquiry Officer was quite wrong and the Inquiry Officer did not act fairly and on 18-11-2003, the second show cause notice was served on him alongwith the finding of the Inquiry Officer and on 22-11-2003, he requested to give the vernacular findings of the enquiry report, but on 25-11-2003, the Hindi version of the second show cause notice only was given to him alongwith the findings of the Inquiry Officer in English and he again made representation to Pilpa and Nagpur office to give the Hindi translation of the findings of the Inquiry Officer and on 16-3-2004, after availing sick leave, when he went to join his duty, he was served with the dismissal order dated 3-2-2004 and he made representation to the management on 17-3-2004 by D.C.P. but no reply was received, by him and service of charge sheet-cum suspension order and letter of appointment of Inquiry Officer on the same date is contrary to the provisions of law, certified standing orders and in violation of the principles of natural justice and he was not given any opportunity to give explanation to the charges leveled against him and the alleged incident as mentioned in the charge sheet dated 6-6-2003 was vague and did not have any connection with his employment and the alleged incident did not occur in the course of employment and outside the premises of the employment and the non-supply of the documents alongwith the charge sheet amounts to violation of the principles of natural justice and as the Hindi version of the enquiry order was not given to him, he was not able to file his show cause to the second show cause notice, but despite the same, in the dismissal order dated 3-2-2004, it has been mentioned that the reply to the second show cause notice was found not to be satisfactory and as such, the dismissal order is illegal, arbitrary and contrary to the provision of law. The workman has prayed for his reinstatement in service with continuity of service and payment of full back wages.

4. The management denying the allegations made in the statement of claim has pleaded in their written statement that the claim of the workman is to be refused as he has not approached the Tribunal with clean hands and has suppressed material facts and on 6-6-2003, at about 8.00 A.M., while Shri Bandopadhyay, Sr. Under Manager, Pipla Colliery was going to his quarters after performing his night shift duty, the workman attacked him and hit him with his stick near the Pipla Colliery gate, as a result of which, he fell down from his scooter and as he tried to protect his head from the stick blow with his arm, his left hand was badly injured and he also received severe blow on his back and then he started running towards the colony and the workman followed him upto some distance by hurling abuses and after the incident, the workman fled away and did not attend his duties, so charge sheet was served on him on 23-6-2003, when he came to the office to attend his duties and as the workman did not submit any reply to the charge sheet within the stipulated time, the enquiry was constituted by the order of the Deputy Chief Personal Manager, Nagpur area and the same was served on 23-6-2003 and all reasonable opportunities were given to the workman in the enquiry and the act of the workman amounts to moral turpitude and the workman willfully went on leave anticipating the order of dismissal and the charges were proved beyond doubt against the workman and he did not challenge the order of dismissal by filing any appeal and he did not ask for any document or the Hindi version of the enquiry report and the charge sheet had been sent to the workman in his permanent address recorded in form-B register and the workman avoided to receive the charge sheet and all relevant documents were produced in the departmental enquiry and proved in accordance with law and there was no question of dominance by the management over the Inquiry Officer and the alleged occurrence occurred inside the premises and the dismissal

of the workman is fair, legal and by following the principles of natural justice.

5. As this is a case of dismissal of the workman from services after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken for consideration as a preliminary issue and by order dated 30-09-2010, the departmental enquiry was held to be improper, invalid and not in accordance with the principles of natural justice.

As prayer had been made by the party no. 1 in the written statement to allow them to prove the charges against the workman as per law, in case of finding of the departmental enquiry not to be fair, the party no. 1 was allowed to prove the charges by adducing evidence before this Tribunal.

6. Before delving into the merit of the matter, I think it proper to mention the English version of the charges leveled against the workman. The charges levelled against the workman are:—

26.4 : Disorderly behaviour either at his place of work or at the colliery/establishment or company's residential settlements.

26.18.1 : Assaulting, attempt to assault, threatening to assault, abuse a co-worker or sub-ordinate or superior while on duty or otherwise in connection with employment.

7. In order to prove the charges against the workman, party no.1 examined Shri Rajukumar Bandopadhaya, the Senior Manager, Pipla Mines, who was alleged to be asaulted by the workman and produced the copies of the written complaint submitted by shri Bandopadhaya to the authorities of WCL and the Medical Examination report of Shri Bandopadhaya Exts. M-II and M-III respectively.

8. The workman has examined himself as a witness in rebuttal.

9. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex court in regard to the procedure to be followed by the Tribunal, when the domestic enquiry is found to be defective. In the decision reported in AIR-1976 SC-98 (Bharat Iron Works vs Bhagabhai Balubhai Patel), the Hon'ble Apex Court have helf that:

> "If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the latter event, the Tribunal will be entitled to arrive at its own conclusions on merits on the evidence produce before it with regard to the proof of the misconduct charged and the Tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's finding in the domestic enquiry will lapse and these will be substituted by th independent conclusions of the Tribunal on merits."

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

10. Shri Bandopadhaya in his examination-in-chief which is on affidavit has stated that on 05-06-2003, he was working as senior under manager in Pipla mines and on that date, while he was in the night shift, the workman approached him at about 12.15 A.M. for approval of the medical certificate issued by a private practitioner, but he refused to approve the same as he was not having any authority to approve the same and after his duty was over, when he was going on his scooter and reached the gate of Pipla Mine at about 8. A.M on 06-06-2003, the workman all of a sudden attacked him with a bamboo stick, as a result of which, he fell down from his scooter and the workman again attacked him and he tried to save himself, as a result of which, he sustained hurt on his left hand and back and somehow, he managed to get up and started running towards the colliery and on the way, he took the cycle of one Shri Mahadeo, a Trammer and proceeded on the cycle,and the workman chased him with the stick in his hand by abusing him in filthy language and after proceeding to some distance, he found the jeep of the Manager of the Mine was coming, so he sat on the jeep, which was occupied by Shri P. Shrikrishna, the manager and Shri T.K. Mondal, Safety Officer and all three of them went in the jeep to the spot of the incident and found the workman was still standing there and his scooter was lying at the same place. Shri Bandopadhaya has further stated that he went to the office with Shri Mondal, the safety officer and from there to the police station and he lodged the FIR and after lodging of the FIR, he was referred to the Primary Health Centre for medical check-up and he was examined by the medical officer of the Primary Health Centre.

In his cross-examination, this witness has admitted that on 05-06-2003, the workman was not on duty and he was on "Sick" on that date and he cannot say if on 06-06-2003, the workman was on duty or not. He has also admitted that neither in Ext. M-II nor in his statement given before the enquiry officer in the departmental enquiry, he had mentioned about the workman approaching him for approval of the medical certificate issued by a private practitioner and his refusal to approve the same on the ground of his having no authority for the same, as stated in his affidavit.

11. In his evidence, the workman has reiterated the facts mentioned in his statement of claim. In his cross-examination, the workman has admitted that he has not filed any document to show that on 05-06-2003 and

06-06-2003, he was at Nagpur due to his sickness. He has denied the suggestions given by the learned advocate for the party no.1 that he had gone to Shri Bandopadhaya for approval of his Medical Certificate granted by a private doctor and as Shri Bandopadhaya, refused for the same, he assaulted shri Bandopadhaya at about 8. A.M. on 06-06-2003 near the gate of the colliery, while Shri Bandopadhaya was going on his scooter and also abused him.

12. At the time of argument, it was submitted by the learned advocate for the party no. 1 that from the oral evidence of Shri Bandopadhaya coupled with the documentary evidence, Exts M-II and M-III it can be held that the charges levelled against the workman have been proved and the testimony of Shri Bandopadhay in respect of his assault by the workman has remained virtually unchallenged in the cross-examination and though it is the plea of the workman that he was not present at Pipla Mine on 05-06-2003 and 06-06-2003 and he was present at Nagpur on those two days for his sickness, the workman has failed to prove such fact by producing any document in support of such claim. It was also submitted that as the charges levelled against the workman have been proved, there is no scope for the Tribunal to interfere with the punishment imposed against the workman.

In support of the contentions, reliance was placed by the learned advocate for the party no.1 on the decisions reported in AIR 1973 SC-2344 (The management of Tournamilla Estate Vs. Workmen), 1993 (3) Mh. L.J. -857 (Bajaj Auto Ltd. Vs Kalidas), (1998) I SCC-484 (Inspecting Asstt. Commissioner Vs. Sharat Narayan) and (2006) 1 SCC-430 (Hombe Gowda Vs. State of Karnataka).

13. Per contra, it was submitted by the learned advocate for the workman that by order dated 30-09-2012, the departmental enquiry conducted against the workman was held to be illegal and not in accordance with the principles of natural justice and the party no.1 was directed to prove the charges levelled against the workman by adducing evidence before the Tribunal and to prove the case, party no.1 has only examined Shri Bandopadhaya and the said witness in his evidence on affidavit has narrated a false story dated 05-06-2003, which was never a part of the charge sheet submitted against the workman or the complaint made in Ext. M-II and such facts have been admitted by him in his cross-examination and the incident dated 05.06.2003 narrated in the affidavit, Ext. M-I is nothing but an afterthought and therefore, false and the evidence of the witness is not at all trust worthy and except Shri Bandopadhaya, who was the complainant, no other witness has been examined by the party no 1 to corroborate his evidence, though the witness himself has named some of the witnesses in his affidavit and as such, reliance cannot be placed on the evidence of shri Bandopadhaya.

It was further submitted by the learned advocate for the workman that there is no evidence on record to show that on 06-06-2003, the workman was on duty and party no. 1 has also failed to show the motive for the alleged assault and then is no evidence on record to show that the alleged misconduct was committed during the course of employment and inside the premises of the workplace and as such, the party no. 1 has no right to issue the charge sheet. In support of the contentions, reliance was placed on the decision reported in SCLC (Vol-4)-484 (Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut & others).

It was also submitted by the learned advocate for the workman that the charges in the criminal case and in the departmental enquiry were the same and the workman was clearly acquitted in the criminal case no. 891/2003 by JMFC. Saoner and as such, the whole of the case of party no. 1 is to be discarded and party no. 1 has miserably failed to prove the alleged misconduct against the workman and as per clause 28.5 of the standing order, the workman is entitled for reinstatement in service with continuity and full back wages.

14. From the evidence of Shri Bandopadhaya and Exts. M-II and M-III, now it is to be considered as to whether the charges levelled against the workman have been proved.

Though Shri Bandophadhya has stated that on 06-06-2003 at about 8. A.M., the workman assaulted him with a bamboo stick and due to the assault, he fell down from the scooter and he sustained hurt on his left hand and back, the medical examination report does not support his evidence. The medical examination report, Ext. M - III shows that there was only redness and Tenderness over left arm and back. There is nothing in Ext. M-III to show as to the age of such tenderness and redness. Moreover, it is clear from the cross-examination of the witness and Ext. M-II, that in order to show the motive of assault by the workman, this witness has made improvement and stated in his affidavit about the workman approaching him for approval of the medical certificate granted by the private doctor, at 12.15 A.M. on 05-06-2003.

Though Shri Bandopadhaya in his affidavit has mentioned that while he was running away from the spot of occurrence, on the way, he met shri P. Shrikrishna, the manager and Shri T.K. Mondal, the Security Officer, who were coming in the jeep of the manager and he came with them in the jeep to the spot of occurrence and he went to the office with Shri T.K. Mondal and then to the police station, party no.1 did not choose at least to examine shri T.K. Mondal as a witness to corroborate the evidence of Shri Bandopadhaya. However, it is necessary to mention here that Shri T.K. Mondal had been examined as a witness in the departmental enquiry. On perusal of the statement of Shri T.K. Mondal recorded in the departmental enquiry, it is found that his evidence is quite contradictory than the

statement of Shri Bandopadhaya. Shri Mondal had not whispered a single word about his coming in a jeep with Shri Bandopadhaya to the spot or going with him to the office or to the police station.

As the evidence of the sole witness examined by party no. 1 is not consistent and beyond the shadow of doubt, implicit reliance cannot be placed on the same. Hence, it is held that party no. 1 has failed to prove the charges levelled against the workman. In view of the failure of the party no. 1 to prove the charges, there is no need to discuss the evidence of the workman.

15. As party no. 1 has failed to prove the charges there is no question of imposition of the punishment against the workman. Hence the punishment imposed against the workman is quashed and set aside.

As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the party no.1, with respect, I am of the view that, the decisions have no clear application to this case.

16. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled for. Taking into consideration the facts and circumstances of the case, it is held that the workman is entitled for reinstatement in service with continuity. So far the back wages is concerned, I think that interest of justice will be met, it the workman is allowed 50% back wages. Hence, it is ordered :—

ORDER

The action of the management of Western Coalfields Limited in dismissing the services of Shri Harichand Dhonbaji Khadse w.e.f. 3-2-2004 is illegal and unjustified. The order of dismissal of the workman from services is quashed and set aside. The workman is entitled for reinstatement in service with continuity from the date of dismissal i.e. 03-02-2004. The workman is entitled to get 50% back wages from the date of dismissal till the date of his actual. reinstatement in service. The party no. 1 is directed to comply with the direction within a month from the date of the publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 324 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 04/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/260/2006-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of WCL, and their workmen, received by the Central Government on 11-1-2013.

[No. L-22012/260/2006-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/04/2007

Date: 27-12-2012.

Party No.1 : The Chief General Manager, WCL, Pench Area, PO: Parasia, Chhindwara, (M.P.)

Versus

Party No.2 : The General Secretary, Sankyukta Koyla Mazdoor Sangh (AITUC), Central Office, Iklehra, Pench Kanhan Area, Chhindwara, (M.P.)

AWARD

(Dated: 27th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Ramesh, for adjudication, as per letter No.L-22012/260/2006-IR (CM-II) dated 18-01-2007, with the following schedule :—

> "Whether the action of the management of M/s. WCL in dismissing Shri Ramesh from service w.e.f. 26-11-2005 is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Ramesh, ("the workman" in short) through his union,"Sanyukta Koyla Mazdoor Sangh (AITUC), ("the union" in short) filed the statement of claim and the management of WCL, ("party no. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was working

as Tyndal and posted at Ganpati Mine, Pench Area and he was served with a charge sheet dated 06-01-2005 and he submitted his reply to the charge sheet in time alongwith the documents regarding his treatment for illness and the party -no. 1 sent the workman to the Hospital for his medical. examination, alongwith the documents produced by him for verification and after the medical examination of the workman, he was found to be ill and such intimation was sent to the management of Newton/Ganpati Colliery by post and such information was also given to the party no. 1 by sending a letter dated 30-03-2005 by post and such information was also sent to the party no. 1 by Badkuhi Hospital on 06-05-2005 by post and on 09-09-2005, when the workman made application to allow him to resume duties, management did not take any action on the said application and inspite of submission of the documents regarding the illness and treatment of the workman, the party no. 1 was bent upon to dismiss the workman from services by hook or crook and lastly dismissed him from services.

The further case of the union is that from the documents produced in the departmental enquiry, it is clear that the workman was regularly attending his duties, when he was not ill and he had attended 191 and 194 days of work in the 2003 and 2004 respectively and he was remaining absent during the period of illness and the party no.1 did not allow the workman to resume duties, in spite of submison repeated applications by the workman and the party no. 1 levelled false allegations against the workman and dismissed him from service after conducting an illegal and fabricated departmental enquiry and as such, the dismissal of the workman is illegal. The union has prayed for the reinstatement of the workman in service with continuity and payment of all back wages.

3. The party no. 1 in their written statement have pleaded inter-alia that the workman was a habitual absentee and due to the habitual absence of the workman, they were facing problem in managing the work in the mines and the workman remained absent from duty from 23-10-2004 to 06-01-2005, without obtaining prior permission from the concerned authority and without any reasonable cause and therefore, charge sheet dated 06-01-2005 was submitted against him and though the workman was intimated about the date of the enquiry, he did not attend the enquiry on 30-06-2005 and as such, the enquiry officer adjourned the enquiry to 12-07-2005 and the workman did not submit any medical certificate and he also failed to produced the medical certificate before the enquiry officer, in spite of giving him reasonable time for the same and it was proved that the workman remained absent from his work without any reasonable cause and committed misconduct and the past record of the workman was not good and the workman himself made admission before the enquiry officer about his remaining absent for the period from 28-10-2004 to 06-01-2005, without any information or prior permission of the concerned authority and in the enquiry the principles of natural justice were followed and the enquiry was conducted impartially and full opportunities were given to the workman to defend his case and as the charge was proved against the workman, the punishment of dismissal from service was rightly imposed against him and the workman is not entitled to any relief.

4. In the rejoinder, the union has reiterated the facts mentioned in the statement of claim.

5. As this is a case of dismissal of the workman from services after holding of the departmental enquiry, the fairness or otherwise of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 19-10-2012, the departmental enquiry was, held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the union representative that the enquiry officer did not consider the documents produced by the workman relating to his illness and treatment and illegally and in violation of the principles of natural justice held the charges levelled against him to have been proved and due to illness, the workman was not able to join his duties and remained absent and the workman had submitted the documents relating to his treatment in different hospitals to the management and he was sent to the Chief Medical Officer, Badkuhi Hospital by the Manager, Neutron Ganpati Colliery for his medical examination and fitness and the Chief Medical Officer intimated the result of the medical examination of the workman to the Manager vide his letter dated 30-03-2005 and in that letter, it was intimated that the workman was under treatment of private doctor from 30-10-2004 to 21-03-2005 and he was found fit for resuming duties, which was duly certified by the competent authority and alongwith the said letter, the documents regarding the treatment of the workman were sent, which facts clearly establish that the workman was not guilty of the misconduct of remaining unauthorized absence and as the findings of the enquiry officer are not based on the evidence of the departmental enquiry, the same are perverse and the punishment of dismissal from services imposed against the workman is shockingly disproportionate and the same is liable to be quashed and set aside and the workman is entitled to reinstatement in service with continuity and full back wages.

7. In reply, it was submitted by the representative for the party no. 1 that by order dated 19-10-2012, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice and the enquiry officer has based his findings on the evidence on record of the enquiry and such findings are given by him after taking in to consideration the evidence adduced in the enquiry and the workman failed to produce the medical certificate before the enquiry officer and as such, the findings of the enquiry

officer cannot be said to be perverse. It was further submitted that the workman was a habitual absentee and for such act of the workman, the management was facing problem in managing the work in the Mines and serious misconduct of remaining absent without prior permission of the competent authority and without any reasonable cause was proved against the workman in a properly conducted departmental enquiry and the punishment imposed against the workman is not shockingly disproportionate and as such, there is no scope to interfere with the punishment by the Tribunal and the workman is not entitled itled to any relief.

8. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged by the Hon'ble Apex Court in different judgments in regard to the jurisdiction and power of the Tribunal to interfere with the findings in a departmental enquiry and punishment imposed against the delinquent workman.

It is well settled that departmental enquiry is not based by strict rules of Evidence Act, but by fair play and natural justice and only total absence, but not sufficiency of evidence before Tribunal is ground for interference by court. It is also well settled that interference with the finding of fact in a departmental enquiry is permissible only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man.

A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordarlce with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

So, keeping in view the settled principles as mentioned above, now, the present case in hand to be considered.

9. In this case, the main contention raised by the union on behalf of the workman is that the workman was ill during the period in question and he was under medical treatment and though the workman produced the documents relating to his illness and treatment before the enquiry officer, the enquiry officer failed to consider the same while giving his findings and holding the workman guilty of the charges and as such, the findings are perverse and the punishment imposed on the workman, basing on such perverse findings is also illegal and the punishment so imposed is also quite disproportionate to the alleged misconduct.

10. Perused the documents relating the departmental enquiry held against the workman, Exts. M-I to M-XXVII and found that the workman had taken the plea in the said enquiry that due to his illness he had not been able to join duties during the relevant period. On perusal of the report of the enquiry officer, it is found that he had taken the evidence adduced by the parties in the enquiry into consideration.

The workman who had examined himself as a witness in his defence in the enquiry, in his cross-examination had categorically stated that though he got himself treated at Parasia hospital on 28-10-2004, neither he made any sick entry nor he got himself declared sick, as because he got himself ordinary treatment with the hope of recovery and joining duty and he did not inform the management about his illness either prior to 28-10-2004 or after 28-10-2004 and that he did submit any application for leave. The workman did not produce any document regarding his treatment relating to his illness and treatment for the period of 23-10-2004 to 06-01-2005 before the enquiry officer, though he produced some medical certificates relating to the period prior to or subsequent to the period from 23-10-2004 to 06-01-2005, which were duly considered by the enquiry officer. However, it is found from the record that party no. 1 had produced documents in the departmental enquiry including the medical certificate granted by Dr. Rajjan Gupta of Chhindwara dated 21-03-2005 (Ext. M-XIV) and the fitness certificate (Ext. M-XIII) issued by the Chief Medical Officer, Barkuhi Hospital, WCL dated 30-03-2005. According to the document, Ext. M-XIV, the workman was suffering from Acid Peptic syndrome with post alcoholic hepatitis and insomnia and therefore advised rest from 30-10-2004 to 21-03-2005 for treatment. It is to be mentioned here that the said certificate was granted only on 21-03-2005, i.e. after the submission of the charge-sheet against the workman. Ext. M-XIII is based on Ext. M-XIV. The workman has not filed a single document to show that either on 30-10-2004 or prior to that he had consulted Dr. Rajjan Gupta for his treatment and the prescription given by him in regard

to his treatment. Moreover, as already mentioned above, the workman had submitted that neither he had intimated the party no.1 about his illness nor had applied for leave. Hence, the findings of the enquiry officer, which are based on the evidence on record produced by both the parties in the enquiry and supported by reasons, cannot be said to be perverse.

10. So far the proportionality of punishment is concerned, it is found that the misconduct of unauthorized absence has been proved against the workman in a properly conducted departmental enquiry. The punishment imposed against the workman cannot be said to be shockingly disproportionate to the proved misconduct. Hence, there is no scope to interfere with the punishment. Hence, it is ordered:—

ORDER

The action of the management of M/s. WCL in dismissing Shri Ramesh from service w.e.f. 26-11-2005 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 38/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/74/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 325 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 11-1-2013.

[No. L-22012/74/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: SRI JAYANTA KUMAR SEN, Presiding Officer

REFERENCE NO. 38 OF 2005

PARTIES: The management of Shankarpur Colly., M/s. ECL, Burdwan

Vs.

The Secy. CMU (INTUC), Ukhra, Burdwan(WB)

REPRESENTATIVES:

For the management: None

For the union (Workman): None

INDUSTRY: COAL STATE: WEST BENGAL

Dated-12.12.12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/74/2004-I.R. (CM-II) dated 10-05-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Shankarpur Colliery under Bankola Area of M/s. Eastern Coalfields Limited in denying pay protection arising out of conversion from Piece rate to Time rated with consequential benefits with effect from 29-04-2003 to Mr. Md. Hidayetullah, Pump Operator is legal and justified? If not, to what relief the workman is entitled?"

Having received the Order of Letter No. L-22012/74/2004-I.R. (CM-II) dated 10-05-2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 38 of 2005 was registered on 31-05-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been noticed that the workman is neither appearing nor taking any step since long. It seems that the workman is not interested to proceed with the case any further. Hence, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 326 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 02/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/5/2010-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 326 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Limited, and their workman, received by the Central Government on 11-01-2013.

[No. L-22012/5/2010-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/02/2010 Date: 28-12-2012

Party No.1 : The Chairman -Cum - Managing Director,
Western Coalfields Limited, Coal Estate,
Civil Lines, Nagpur-440 001.

The Chief Security Officer,
Western Coalfields Limited,
Coal Estate, Civil Lines, Nagpur-440001
The Sub Area Manager,
M/s. Western Coalfields Limited,
Gondegaon Mine, PO:Gondegaon,
Tah. Parseoni,
Distt. Nagpur.

Versus

Party No. 2 : Shri Sagar Bajirao Nagdeote,
R/ o. Flat no.6, Marvel Apartment,
Nr. Jaripatka Police Station, Nara Road,
Nagpur.

AWARD

(Dated: 28th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sagar Nagdeote, for adjudication, as per letter No.L-22012/5/2010-IR (CM-II) dated 29-03-2010, with the following schedule:—

> "Whether the action of the management of M/s WCL in imposing the punishment of dismissal from service vide its order dated 05-02-2009 upon Shri Sagar Nagdeote, Sr. Security Inspector is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, parties were noticed to tile their respective statement of claim and written statement, in response to which, the workman, Shri Sagar Bajirao Nagdeote, ("the workman" in short) filed the statement of claim and the management of Western Coalfields Ltd. ("party no. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he came to be appointed as a Security Inspector, (Technical Supervisor Grade 'C') in the office of Party No. 1 vide order dated 12-08-1993 and posted at Ghughus Colliery of Wani Area and in the year 1994, he was transferred to Pench Area and in 1996, he was transferred to Nagpur Area and in 1998, he was transferred to Chandrapur Area on promotion as Security Inspector, Grade 'B' and as per order dated 25-01-2003, he was promoted as Sr. Security Officer and posted at Ballarpur and vide order dated 15-12-2004, he was posted at Gondegaon Sub Area and he had no power either to take disciplinary action against the Security Guards placed under him or to sanction any leave or to write their confidential reports and the nature of the duties he was performing indicates that he is a workman as defined under Section 2(s) of the Act and Party No. 1 is an industry within the provisions of Section 2(j) of the Act and Party No.1 have framed their own Certified Standing Order. The further case of the workman is that while he was working at Gondegaon, he suffered from hyper tension and other ailments and as such, with advance intimation to Supdt. of Mines, Gondegaon, he remained on leave for the period from 30-07-2005 to 06-08-2005 and at the time of his assuming duty on 07-08-2005, he submitted an application to the Supdt. of Mines alongwith the Medical Certificate and the Area Security Officer recommended to the Sub Area Manager to allow him to join duty and accordingly, the Supdt. of Mines, allowed him to join duties and therefore, he marked his attendance on the attendance register and continued to perform his duties from 9-08-2005 and Party No. 1 due to some misunderstanding, held that he had joined duties without permission of the Competent Authority and served a charge sheet dated 12-09-2005 on the allegation of tempering the company's record and an enquiry was constituted and conducted against him and during the enquiry, on 12-02-2007, being mentally disturbed due to the atrocities of the

Superintendent of Mines, he submitted his resignation, but the status of his resignation was neither communicated to him nor leave was sanctioned, so on 31-08-2007, under the provisions of. "Right to Information Act", he made an application to know about the decision taken by the Party No. 1 on his resignation, but no reply was given and as no intimation was received by him, he withdrew his resignation on 05-03-2008 and sought for permission for relinquishment of his services with effect from 04-04-2008, but instead of taking any action on his application, a second show cause notice was issued in regard to the charge sheet dated 06-10-2007 to him, by the Chief Security Officer, WCL, Head quarters, Nagpur to him and he submitted his reply to the second show cause notice vide his letter dated 20-10-2007, mentioning therein that he did not commit any misconduct by resuming his duties after due permission and as such, the proposed punishment of stoppage of two increments should not be imposed, but Party No. 1 without taking his reply into consideration, by order dated 28/30-11-2007 imposed the punishment of withholding of two increments with cumulative effect and he preferred an appeal against the said punishment on 22-10-2007 and through the same was received by the Party No.1, Party No. 1 did not decide the appeal, so by letter dated 06-06-2008, he reminded the Party No.1 to decide the appeal, still then, the appeal was not decided.

The further case of the workman is that on 08-03-2008, he was served with another charge sheet on the allegations of his remaining absent without any cogent reason and he submitted his reply to the charge sheet on 9-04-2008 alongwith the medical certificate to the Supdt./ Manager, Gondegaon covering his absence for entire period of illness, with a request to withdraw the enquiry proceedings and simultaneously, he submitted a letter to the Enquiry, Officer, enclosing therewith a medical certificate, requesting him to ascertain the facts and to close the enquiry proceedings forthwith, in terms of the resignation dated 05-03-2008, but the Enquiry Officer did not take any cognizance of the matter and vide letter dated 29-04-2008, the Enquiry Officer directed him to take up the matter with the Sub Area Manager and instructed him to take part in the enquiry and by application dated 15-03-2008, he requested the Supdt. of Mines/Manager, Gondegaon to allow him to join duties and Party No. 1 vide letter dated 16-03-2008, asked him to join duties forthwith, but due to suffering from continuous hyper tension/sickness, he could not join duty immediately, but however, he reported for duty on 01-04-2008 alongwith medical certificate dated 23-03-2008, but he was not allowed to join duty, and after a period of two months, vide office order dated 31-05-2008, he was asked to join duties forthwith and in June, 2008, he made a representation to inform him the result of the appeal and for acceptance of his resignation, but Party No. 1 instead of considering his above request, served a second show cause notice to the second charge sheet, on him alongwith the enquiry report dated 15/20-12-2008 and he filed his reply on 06-01-2009 to the second show cause notice, denying the charges and by his letter dated 10-01-2009, he made a request to allow him to join duties forthwith and by letter dated 17-01-2009, he further intimated the Supdt. of Mines/Manager, Gondegaon that as per management's instructions, he had already obtained the counter signature of the Colliery doctor, but he was not allowed by Party No. 1 to join duties and he was illegally dismissed by order dated 05-02-2009, even though he reported frequently for duties and the charges levelled against him were illegal, as the same were not covered by specific clause under misconduct and the enquiry conducted against him in respect of the first charge sheet dated 12-09-2005 was violative of the principles of natural justice and the Enquiry Officer submitted the enquiry report on charges of misappropriation, which was not the charge levelled against him and the findings recorded by the enquiry officer were totally perverse and contrary to law and the punishment imposed by the Chief Security Officer, WCL, HQ was without any authority.

The further case of the workman is that the charge sheet dated 08-03-2008 was served on him by Party No. 1 fully knowing that he had already submitted his resignation on 12-02-2007 and he submitted his reply to the said charge sheet and thereafter, he requested for the withdrawal of the charge sheet and also sought permission by letter dated 5-3-2008 to resign/relinquish his job w.e.f. 04-04-2008 and his resignation was pending much prior to the issuance of the charge sheet and from such facts, it is quite evident that Party No.1 was pre-determined about his dismissal with malafide intention and revengeful attitude and Party No. 1 had sought approval of Chief General Manager, Nagpur Area to terminate his services in anticipation of the receipt of the enquiry proceedings, but the Chief General Manager deferred the above proposed disciplinary action and did not recommend for termination, which clearly reflectes that the enquiry was an empty formality and he has been victimized and the punishment was imposed without giving him fair opportunity during the departmental enquiry and without considering the factual position of the case and the material on record of the enquiry and the report of the Enquiry Officer are totally perverse and the enquiry conducted against him is violative of the principles of natural justice and the order of dismissal dated 05-02-2009 is totally unwarranted, arbitrary and unsustainable. In the eye of law and shockingly disproportionate and amounts to unfair labour practice under schedule V of the Act.

The workman has prayed to set aside the order dated 05-02-2009 and to reinstate him in service with continuity, full back wages and all consequential benefits.

3. The Party No. 1 in their written statement have pleaded inter-alia that the reference has been made in respect of the dismissal order dated 05-03-2009 only and

as such, the challenge by the workman to punishment order dated 30.11.2007 of withholding two increments with cumulative effect cannot be considered and similarly, the questions of departmental appeal and resignation etc pleaded by the workman cannot be looked into for deciding the present reference and such facts have been pleaded by the workman only with the intention to prejudice the mind of the Tribunal. It is further pleaded by the Party No. 1 that the attendance record of the workman shows that he attended duties for 98 days from February, 2005 to December, 2005 and 12 days from January, 2006 to December, 2006 and did not attend duties at all from January, 2007 to February, 2009 and for remaining absent earlier without obtaining leave and tampering with the records of department for the purpose of joining duty, a second show cause notice dated 06.10.2007 was issued to the workman, proposing the punishment of dismissal, but however, while imposing punishment, a lenient view was taken and punishment of withholding of two increments with cumulative effect was imposed and in spite of the said fact, the workman never bothered to get his leave sanctioned from the competent authority and continued to remain absent from duty and a bare perusal of the documents submitted by the workman himself will demonstrate that in fact, he was not suffering from any ailment, much less hyper tension, as otherwise, he would not have been able to write the said letters in details and as per the Certified Standing Order, the ailment if any has to be certified either by the doctor of the company or a Civil Surgeon, failing which, the same is not acceptable and in the statement of claim, the workman has admitted that charge sheet dated 08.03.2008 was duly served on him and he submitted his reply and the second show cause notice with the enquiry report and enquiry proceedings was served on him and in the entire statement of claim, except the pleadings that fair opportunity was not given to him and the principles of natural justice were not followed, the workman has not demonstrated how the enquiry conducted against him was not fair and proper and the workman had requested for termination of the enquiry on the ground of pendency of his appeal and resignation, but he was specifically replied that the same have nothing to do with the enquiry and hence, he should participate in the enquiry and inspite of the same, the workman failed to participate in the enquiry proceedings and as such, the enquiry was proceeded exparte and the enquiry conducted against the workman was fair and by observing all the principles of natural justice and during the enquiry, the workman requested to join duty, which was allowed, but he failed to join duty and they were left with no option, but to dismiss the workman, as he was remaining absent from 25.02.2006, without taking prior sanction and the workman was so diligent enough to understand the things that when they intended to take action against him, he became fit to resume duties, but when he was asked to resume duty, again without any justification, he remained absent and after conducting a fair enquiry against the workman and taking into consideration his past service record, they were constrained to dismiss the workman from services and the allegations of malafide are baseless and approval and sanction were taken in accordance with the practice prevailing in their office and there was no malafide of what so ever and action was taken against the workman by the Competent Authority as per the Certified Standing Order and as such, dismissing the workman from services cannot be said to be an unfair labour practice and the reference is liable to be answered in the negative.

4. As this is a case of dismissal of the workman from services after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken for consideration as a preliminary issue and by order dated 05.10.2012, the departmental enquiry was held to be legal, proper and in accordance with the principles of natural justice.

5. In the written notes of argument, the learned advocate for the workman at the very outset has reiterated about the issuance of charge sheet dated 12.09.2005 against the workman, which has not been included in the schedule of reference for adjudication. It is to be mentioned here that while passing orders on the fairness or otherwise of the departmental enquiry, order has already been passed that there is no scope to consider about the punishment imposed against the workman in earlier departmental proceedings or matters relating to the same. Moreover, it is well settled by the Hon'ble Apex Court in series of decisions that the Tribunal is not empowered to travel beyond the schedule of reference and to decide other issues raised by the parties. So, at the cost of repetition, it is to be mentioned that there is no scope to consider about the punishment imposed against the workman in earlier departmental proceedings or matters relating to the same.

6. The learned advocate for the workman, in the written notes of argument has further mentioned that Model Standing Order prevails over certified Standing Order, in the event of conflict and regarding submission of resignation by the workman and the party no. 1 not taking any decision on the same, submission of the second charge sheet during the pendency of the appeal preferred by the workman against the punishment imposed against him in the earlier departmental enquiry and that the charges levelled against the workman to be illegal and in view of the pendency of the resignation submitted by the workman, submission of the charge sheet and punishment imposed to be illegal and improper.

It is to be mentioned here that the above contentions were raised by the learned advocate for the workman, while making submissions regarding the

validity of the departmental enquiry and were considered and necessary orders were passed on the same, while passing orders on the validity of the departmental enquiry, so, there is no need to consider the same again.

8. The further contentions raised by the learned advocate for the workman was that the party no.1 had already sought approval of the Chief General Manager, Nagpur Area to terminate the services of the workman in anticipation of the receipt of the enquiry proceedings, but the Controlling Authority deferred the proposal and did not approve the proposal, which reflects that the enquiry was an empty formality with malafide intention and colourable exercise of power by the management and the party no.1 was predetermined about the dismissal of the workman and the proposal of dismissal of the workman was initiated by the Superintendent of Mines, Gondegaon and routed through the Chief Security Officer and the proposal was approved by the Chief General Manager, Nagpur Area, who was not the Controlling Authority of the Security employees and as such, the approval accorded by the Chief General Manager was without any authority. It was further submitted by the learned advocate for the workman that while imposing the punishment, the past clean and unblemished service record of the workman was not taken into consideration and the whole action of party no. 1 shows that it acted with malafide intention and vindictive attitude right from the beginning of the first charge sheet and it was bent upon to remove the workman from services and the workman was sacked without unbiased proof and the enquiry report is perverse and dismissal is illegal and the workman is entitled for reinstatement in service with continuity and full back wages.

In support of such contentions, the learned advocate for the workman placed reliance on the decisions reported in 2000 I CLR-808 (Ramdas Govind Bakhic Vs. M.S.F.C.), I LLJ 1998-25 (Mohd. Shahid Vs. Aligarh Muslim University and another) and 1994 (6) SLR-183 (S.B. Ramesh Vs. Ministry of Finance).

It is necessary to mention here that though the learned advocate for the workman has mentioned about some other decisions in the written notes of argument, such decisions have not been filed for perusal of the Tribunal.

9. Out of the three decisions as mentioned above, the decisions reported in I LLJ, 1998-25 (Supra) and 1994 (6) SLR-183 (Supra) were cited by the learned advocate for the workman at the time of consideration of the fairness of the departmental enquiry and already dealt with at the time of passing of the orders on the validity of the departmental enquiry. So, with respect, I am of the view that there is no need to deal with the same again.

So far the decision reported in 2000 I CLR-808 (Supra) is concerned, the same is a decision regarding continuance of the disciplinary enquiry after retirement of the employee, in absence of any provision enabling the management to continue the enquiry, which is not the case in the present case in hand. Hence, with respect, I am of the view that the said decision has no clear application to this case.

10. Per Contra, it was submitted by the learned advocate for the management that most of the submissions made in the written notes of argument are in regard to the fairness of the departmental enquiry, which had already been considered by the Tribunal and there is no question of consideration of such submissions again, while considering the perversity of the findings and proportionality of punishment and the findings of the enquiry officer are based on the Subjective analysis of the evidence adduced in the departmental enquiry and the same are not based on any extraneous materials and as such, the findings of the enquiry officer cannot be termed as perverse and the approval of punishment was accorded by the competent authority, as prescribed under the provisions of the certified standing order and there is no illegality in the same and it is clear from the order of punishment passed against the workman that his past service record was considered by the disciplinary authority and as serious misconduct of remaining unauthorized absent has been proved against the workman in a properly conducted departmental enquiry, the punishment of dismissal from services imposed against him is justified and there is no scope for the Tribunal to interfere with the same.

11. So for the submission made by the learned advocate for the workman regarding the legality and the approval of the imposition of the punishment is concerned, it is found from the own pleadings of the workman in the statement of claim that the departmental enquiry was initiated against him, while he was working at Gondegaon sub-area. According to the office order dated 11/15-01-1994 of the office of Chairman-cum-Managing Director, WCL under clause 2.3 of the Certified Standing Order, the Sub-Area Manager is the competent authority of the office of the Sub-Area Manager and such other departments and establishments which are placed under his direct administrative control. It is also found from the officer order dated 11/15.01.1994 issued from the office of the Chairman-cum-Managing Director, WCL, in accordance with clause 28.6 of the Certified Standing Order that where the Sub-Area Manager is the dismissing/ discharging/ removing authority, the General Manager or Chief General Manager is the approval giving authority. In this case, the punishment of dismissal was passed by the competent authority, i.e. the Sub-Area Manager so the approval giving authority was the General Manager Chief General Manager. So, there is no illegality in approving the punishment imposed against the workman by the Chief General Manager. So the contention raised in this regard by the learned advocate for the workman fails.

It is also found from the order of dismissal from

services passed against the workman that his past service record was considered by the disciplinary authority, before imposing the punishment.

12. On perusal of the record, it is found that the findings of the enquiry officer are based on the evidence adduced in the departmental enquiry. It is not a case of no evidence. Hence, the findings of the enquiry officer cannot be said to be perverse. Serious misconduct of unauthorized absence from duty has been proved against the workman in a properly conducted departmental enquiry therefore, the punishment imposed against the workman cannot be said to be shockingly disproportionate. So, there is no scope to interfere with the punishment. Hence, it is ordered :—

ORDER

The action of the management of M/s WCL in imposing the punishment of dismissal from service vide its order dated 05-02-2009 upon Shri Sagar Nagdeote, Sr. Security Inspector is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 327 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन.एल.सी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (आईडी संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/179/2011-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 327.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of NLC Ltd., and their workmen, received by the Central Government on 11-01-2013.

[No. L-22012/179/2011-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Thursday, the 27th December, 2012

Present: A. N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 5/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their Workmen)

BETWEEN

The President NLC Labour & Staff Union Block-24 Neyveli-607803 : 1st Party/Petitioner Union

AND

The Chairman & Managing Director Neyveli Lignite Corporation Ltd. Corporate Office Neyveli-607803 : 2nd Party/Respondent

Appearance :

For the 1st Party/Petitioner Union : M/s. Row & Reddy, Advocates

For the 2nd Party/Management : M/s. T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22012/179/2011-IR (CM-II) dated 05.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Neyveli Lignite Corporation in imposing the punishment of stoppage of two increments with cumulative effect against Sri S. Karthikeyan is legal and justified? To what relief the workman concerned is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as I.D. 5/2012 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim and Counter Statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows:

The workman S. Karthikeyan who joined the Respondent Corporation on 15-05-2006 was charge sheeted on 26.09.2008 alleging (i) that he was absent in his work place on 25.09.2008 and (ii) that at 13.45 PM he was found in crowd creating public nuisance violating the standing orders. But for the charges he has had admittedly an unblemished record of service. He was proceeded

against only for the reason of being an active member of the Petitioner Union. Enquiry commenced on 12.11.2008 was adjourned to 24.11.2008, 27.11.2008 and again to 8.12.2008 when the Presenting Officer was examined. The workman was not given opportunity to cross-examine the witnesses or to examine his own witnesses abruptly closing the enquiry. Without show cause notice stoppage of two increments was straightaway imposed on 30.12.2008, served on 08.01.2009. Even before service Respondent deducted two increments from 2008 December itself indicating vindictiveness of the Management towards him. Punishment is to be set aside. Enquiry was in gross violation of principles of natural justice. Nobody other than the Presenting Officer was examined. No material witness was examined to prove the charge. Charge cannot be said proved. Workman was not given copy of the enquiry report till date against principles of natural justice. He is victimized for his Trade Union Activities. Fairness of the domestic enquiry is questioned. Punishment is grossly disproportionate to the gravity of the allegation. Clause-47(i)(h) of the Standing Order of the Corporation viz. notice provision has not been complied with. Punishment is illegal. By an award Respondent is to be directed to refund any amount deducted from his salary.

4. Counter Statement averments bereft of unnecessary details are as follows:

To the knowledge of the Respondent, Petitioner Union does not command membership of substantial section of the workmen or taken up the cause by them nor authorized the Petitioner Union to raise dispute rendering it not a valid ID. Respondent establishment is a township with municipal functions carried out by itself. Employees are provided residential accommodation, water and electricity at subsidized rates. The township itself is treated as the place of employment and any incompatible acts committed at any time fall under the disciplinary jurisdiction of the Corporation. The township is divided into 30 block and every block has different types of houses as "A" to "H". While direct employees are living in 28 blocks, 21 and 30 are kept vacant occupied by non-employees engaged by the Corporation who have put up their own structure, which are also provided water and electricity at subsidized rates with nominal ground rent for the site. Transmission of electricity to the houses of the employees is by overhead lines. Technician category employees are with 8 hours shift work in 3 shifts by rotation with duration of 8 hours per shift. In extraordinary circumstances 10 minutes grace time is allowed at each end, not claimable as a matter of right or course, which attendance is recorded by computerized punching system. Non-employees in Block No. 30 had been indulging in theft of energy by unauthorizedly drawing Power from the overhead lines. To prevent this in order to divert supply from overhead line to underground cable when Sri S. Suresh, Assistant Engineer/ETM/TA was to commence work on 25.09.2008 the non-employees were found gathered in Block-30 area and started pelting stones at the field staff and others who were engaged for laying the underground cables and obstructing the work. The workman was working in the first shift on that day in Mandarakuppam Colony (MKC) Fuse of Call Office (FOCO), punched his card 12 minutes before the close of the shift, proceeded to Thermal Station-II Road, near the Central Applied Research and Development Office, led the crowd of non-employees who had gathered and squatted in Thermal Station-II Road started shouting slogans. Mr. Suresh was questioned by the workman why the work was being cut. He was forced to assure that work will not be proceeded with in order to avert the unruly tense situation created by the restive crowd. The workman at that time was turning at Thermal Station-I to Thermal Station-II Road, not en route from the place of his work. Arising out of the role played by the workman in organizing agitation, charge sheet was issued to him to show why disciplinary action shall not be taken His explanation being not satisfactory enquiry was held in which Mr. Suresh was the Presenting Officer who gave his statement for minor misconduct. Punishment is justified and valid. Respondent is to be allowed to lead evidence on the merits of the misconduct. Victimization plea is wholly unfounded. Section-11A of the ID Act is not attracted for interference with the punishment. The same is only to be upheld.

5. Points for consideration are:

(i) Whether the stoppage of two increments with cumulative effect against S. Karthikeyan is legal and justified?

(ii) To what relief the concerned workman is entitled?

6. Evidence consists of the oral evidence of WW1 and WW2 and Ex.W 1 to Ex.W 13 on the petitioner's side and oral evidence of MW1 and EX.M1 to EX.M9 on the Respondent's side.

Points (i) & (ii)

7. Heard both sides. Perused the records, documents, evidence and written arguments on behalf of the petitioner. Both sides keenly argued in terms of their pleadings with reference to documents and evidence. The conspicuous arguments on behalf of the petitioner are that the workman never led the mob as alleged in the Charge Sheet. Due to heavy traffic jam the worker was getting down from his bus and was near the crowd at a time outside his working hours and outside his work place. The workers completed his working hours without complaint and left the place of work with permission. Clause-46(i)(vii)(xxxv)(xxxviii)(xxiii) dealing with willful insubordination or disobedience, Clause-46(vii) dealing with habitual absence, Clause-46(xxxv) dealing with any act punishable under law, Clause-46(xxxviii) dealing with breach of any of the Standing Orders or Rules framed thereunder or Clause-46(xxiii) dealing with

participation in subversive movement are not attracted to conclude violation of any Standing Orders. Charge Sheet is bald. Punishment is major punishment imposed in advance without opportunities having been made available to him.

8. While arguing on behalf of the Respondent its learned counsel fairly conceded that the enquiry and the finding thereon are given up and that reliance is not placed on the enquiry proceedings and enquiry finding borne materials for a decision in this forum but seeks to rely on the materials adduced by way of evidence in this forum on the merits exclusively. Respondent has sought for permission to let in evidence on merits in the adjudication herein for which he has relied on the dictum in the decision of the Apex Court in DELHI CLOTH AND GENERAL MILLS CO. LTD. VS. LUDH BUDH SINGH (1972-I-LLJ-180) wherein it is held as follows "61 ..... If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it." It is further argued that the duty of the workman Karthikeyan having been over at 02.00 PM and he being resident of Block-12, he has not had the necessity of going to Block-30 after leaving office. His object was to join the agitation at Block-30. There he led the workmen. That he left at 01.48 PM is not disputed. WW2, Karthikeyan, the workman has not disputed the averments in Para-4, 5 and 7 of the Counter that is regarding transmission of electricity by overhead lines, attendance is recorded by computerized punching system and regarding the role of the workman in organizing the agitation that he was Charge Sheeted pointing against him. While the workman was admittedly going by two-wheeler the written arguments on his behalf state him to have had gone by bus, which the learned counsel for the petitioner claims to be a, bonafide mistake, The agitation was to object shifting from the overhead line to underground cable in which case the non-employees would not be enabled thereafter to continue theft of electricity as endorsed by MW1. There cannot be any act of victimization against the workman where the misconduct charged stands established. In other words proved misconduct is antithesis of victimization. This is a case where Section-11 A is not attracted evidently.

9. What is called in question is the punishment of stoppage of two increments with cumulative effect against the workman whether as being legal and justified? The specific case on behalf of the petitioner is that he never participated in any movement much less subversive movement. No violation of any of the provisions of the Standing Orders could be made out against him. The Charge Sheet issued against him includes charge of participation in subversive movement of any kind and in any manner under clause-46(xxiii). It is discernibly fallacious for the petitioner to have had contended that there is no violation of any of the Standing Orders or Rules attributable against him. The Ex. M 1-Attendance Register shows the petitioner to have had left the office at 01.48 PM whereas his duty time was till 02.00 PM. Leaving office during grace time is not a right but could be availed only with permission. That the workman has had permission to leave at the grace time does not stand proved. MW1 has clearly established that he has seen him standing in front of the agitating mob shouting slogans. This does not stand rebutted. While evidently the workman has been a rider on motorcycle for to and fro journey to the place of work and back, what is argued on behalf of him that is while he was travelling on bus due to traffic jam he was just alighting at the place of agitation, which argument has later been confessed to be an argument based on a genuine fallacy on the part of the learned counsel for the petitioner.

10. In view of the fact that a decision has to rest merely on the evidence adduced in this case on merits, since the enquiry proceedings and the report thereon are not sought to be relied on to decide on the dispute, the question is whether the materials on record, way of some legal evidence, not in the sense of adequacy of evidence, are such as to lead to the conclusion that the petitioner could be held guilty of all or any of the charges and the punishment imposed could be held just and proportionate to the gravity of the offence.

11. In this case on the materials disclosed, from the evidence adduced by MW1 coupled with the statement Ex. M8 forming the basis for the Charge Sheet against the workman alleging the charges against the workman fully go to establish that the workman is guilty of subversive movement against the Management. There is no reason to disbelieve MW1 whose evidence finds support from other valid, reliable and documentary materials. Ex. M8, the earliest material that he furnished by way of report regarding the participation of the workman at the scene of agitation goes consistent with his version in the box. Ex. M8 can automatically go into the evidence without any fetters since Evidence Act is not strictly applicable in enquiries like this where the emphasis is only on the aspect of finding of facts. Any material logically probative to a prudent mind could furnish valid evidence to arrive at a conclusion thereby led. The punishment is just and proportionate and the same does not call for interference invoking Section-11A of the ID Act not falling under Section-2A of the ID Act. Hence the punishment is only to be upheld as legal and justified entitling the workman to no relief.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th December, 2012).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner Union : WW1, Sri G. Kuppasamy
WW1, Sri S. Karthikeyan

For the 2nd Party/ Management : MW1, Sri S. Suresh

Documents Marked:
On the petitioner's side

Ex. No.	Date	Description
Ex. W1	26-09-2008	Charge Sheet
Ex. W2	3-11-2008	Respondent proceedings appointing enquiry officer and presenting officer
Ex. W3	7-11-2008	Enquiry Notice
Ex. W4	12-11-2008 to 8-12-2008	Enquiry Proceedings
Ex. W5	11-9-2008 to 10-10-2008	Performance period of petitioner
Ex. W6	30-12-2008	Punishment Order
Ex. W7	28-2-2009	Appeal filed by the workman
Ex. W8	23-8-2010	Dispute raised by the petitioner before the Assistant Labour Commissioner (Central)
Ex. W9	20-9-2010	Order of Appellate Authority
Ex. W10	March 2011	Counter filed by the Respondent before ACL
Ex. W11	29-8-2011	Reply filed by the petitioner before ACL
Ex. W12	—	Extract of the Standing Order
Ex. W13	10-7-2010	Copy of minute of resolution passed by the Petitioner Union to take up dispute

On the Management's side

Ex. No.	Date	Description
Ex. M1	25-09-2009	Copy of computerized attendance pertaining to S. Karthikeyan - Code No. 45112
Ex. M2	—	Neyveli Township Plan
Ex. M3	17-10-2008	Explanation by CSE to the Charge Memo dated 26-09-2008
Ex. M4	07-10-2008	Letter from Charge Sheeted Employee (CSE)-S. Karthikeyan requesting time to give his explanation-permitted on 07-10-2008
Ex. M5	—	Standing Orders
Ex. M6	20-11-2008	Notice of enquiry officer - posting enquiry on 24-11-2008
Ex. M7	24-11-2008	Letter of CSE requesting to treat as duty the period he attended the enquiry
Ex. M8	26-09-2008	Report of S. Suresh - Asstt. Engineer-Electrical, FOC, Block-29, NLC Township, NLC, Neyveli.
Ex. M9	12-12-2008	Report of the Enquiry Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 328.– औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आल इण्डिया रेडियो के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (आईडी संख्या 271/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/18/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 271/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of All India Radio and their workmen, received by the Central Government on 11-01-2013.

[No. L-42012/18/2004-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 271/2011

Sh. Bidhan Sharma,
R/o SE/55/D, Singapur,
Shalimar Bagh,
New Delhi-110052 ... Workman

Versus

The Director General,
All India Radio,
Through Chief Engineer (North Zone),
New Delhi ... Management

AWARD

A contract labour was engaged by M/s. G.T. Roadways, a contractor, in August, 1997 to carry out work awarded by All India Radio and Doordarshan (in short the management). He served the contractor upto 7th February, 2001. His services were disengaged by the contractor. Belabouring under a belief that he was as employee of the management, he raised a demand for reinstatement in service. When his demand was not conceded to, he preferred a petition before the Central Administrative Tribunal (in short the CAT). His petition was disposed of by the CAT on 31st July, 2002. Thereafter he filed a claim petition before the Conciliation Officer. Since his claim was contested by the management, conciliation proceedings come to an end. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No. 2, New Delhi, vide order No. L-42012/18/2004-IR(CM-II), New Delhi dated 27-1-2005, for adjudication with following terms :

> "Whether the demand of the Ex. workman Sh. Bidhan Sharma, Labourer for reinstatement in the establishment of Chief Engineer (North Zone), Akashwani and Doordarshan w.e.f. 8-2-2001 is just, fair and legal? If yes, to what relief the workman is entitled and from which date?"

2. Claim statement was filed by the contract labour, namely, Shri Bidhan Sharma pleading that he was recruited by the contractor in August 1997 to work at the office of Chief Engineer (North Zone) of the management. Initially he was paid rupees seventy per day, which amount was later on increased to rupees eighty five per day. Though he was recruited by the contracter, yet his work was not supervised by him. In fact officials of the management were supervising his work. He worked upto 7th February, 2001, without any break. He rendered more than 240 days service in every calender year. His services were dispensed with by the' management, in collusion with the contractor, on 7th February, 2001. No notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid and provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) were violated. After termination of his services other persons were engaged. He claims that an award may be passed in his favour, reinstating him in services of the management with continuity and full back wages.

3. Claim was demurred by the management, pleading that there was no relationship of employer and employee between the parties. It was M/s. G.T. Roadways, the contractor, who engaged the claimant to carry out work awarded to it. The contractor made payments of wages to the claimant. Contractor used to superwise work of claimant. Services of the claimant were dispensed with by the contractor. There is no case of reinstatement in service, in favour of the claimant. His claim deserves dismissal, being devoid of merits, pleads the management.

4. Vide order No. Z-20019/6/2007-IR (C-II), New Delhi, dated 30-03-2011 the appropriate Government transferred the case to this Tribunal for adjudication.

5. Claimant has examined himself in support of his claim. Shri R.V. Sharma was examined by the management in its defence. No other witness was examined by either of the parties.

6. Argument were heard at the bar. Shri Jatin Rajput, authorized representative, advanced arguments on behalf of the claimant. Shri S.M. Arif, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

7. In his affidavit Ex.WW1/A, tenderd as evidence, claimart swears that initially he was recruited by M/s. G.T. Roadways in August 1997 to work as labour at the site of the management. He was recruited again in August 1997 at the same site, where he worked till 07-02-2001. His wages were paid at the site by the contractor. He placed reliance on documents Ex.WW1/1 to Ex.WW1/8, to establish that he was an employee of the management.

8. Sh. R.V. Sharma projects in his affidavit Ex. MW1/A that there was no relationship of employer and employee between the parties. Claimant was employed by the contractor. His deployment was at the discretion of the contractor. The management used to make payment to the contractor on the basis of measurements of work done on behalf of the contractor. Supervision of work of the claimant was done by the contractor. During the course of cross examination he unfolds that no supervisor was employed by the management to inspect work of contract labours. Management never check work done by the labours. When work used to come to an end, at that juncture work was inspected. In case it was found not according to specifications, the management used to reject the work.

9. Out of facts unfolded by the claimant and Sh. R.V. Sharma, it came to light that the claimant was recruited by the contractor. The claimant was employed at the site of the management by the contractor, to carry out work awarded to him. The contractor used to make payment of wages to the claimant. No supervisor was appointed by the management to superwise work of the contract labours. It was the contractor who used to superwise work of his employees.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

11. As conceded by the claimant he was employed by the contractor. No evidence was adduced by the claimant to the effect that the contractor was an agent of the management. Documents, which are Ex.WW1/1 to Ex.WW1/8, nowhere bring it over the record that the claimant was ever engaged by the management. On the other hand, above documents project that the claimant was an employee of the contractor. Consequently it is clear that the claimant was employed by the contractor, to carry out work awarded to him by the management. The claimant made an admission in his affidavit to the effect that his wages were paid by the contractor. These facts are sufficient to conclude that it was the contractor who engaged the claimant on job, to carry out work awarded to him by the management. The contractor was the pay master of the claimant. Relationship of employer and employee never existed between the claimant the management.

12. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

13. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (supra). The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus :

". . . . they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of

contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

14. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under Section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contractor is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

15. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

16. In Shivnandan Sharma [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers including the appellant Head Cashier. The question before the Apex Court was : was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the

veil and looking at the conspectus of factors governing employment, the naked truth, though drapped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words :

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shakenoff. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of aboliton of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

18. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an present so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian petro-chemicals Corporation case [1999(6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer. but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the contractor is sham and nominal.

19. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard to regulatory measures Section 7 requires the principal employer to get itself registered, while Section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of Sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was rules that only consequence of non-compliance either by the principal employer of Section 7or by the contractor in complying the provisions of Section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

20. In the Steel Authority of India (supra) the Apex Court laid emphasis "..... the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation

of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

21. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management? For an answer, legal diota is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal Works (1966 (I) LLJ 717), National Iron and Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I)LLJ, 566), The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was offered, thus :

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

22. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus :

> "The appropriate Government when taking action udner Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellent is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of laoding and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government accordance with the provisions of the Central Act.

23. In Gujrat Electricity Board (1995 (5) S.C.C. 27) the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus :

> "53. Our conclusions and answers to the questions raised are, therefore, as follows :
>
> (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
>
> (ii) If the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have

jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

24. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract Labour Act.

25. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the management and the contractor was sham and nominal. Unfortunately, either of the parties had not produced the contract agreement before this Tribunal. Under these circumstances, the Tribunal cannot examine the written instrument entered into between the management and the contractor. However, it would be ascertained as to whether the claimants could produce evidence to the effect that financial, supervisory, administrative and disciplinary control were exercised over him by the management.

26. As testified by Shri R.V.Sharma, no supervisor was deployed by the management to superwise the work of the labour. Work done by contract labours was measured and than payment was made to the contractor. Deployment of the claimant was at the discretion of the contractor. It is not a matter of dispute that services of the claimant were dispensed with by the contractor. It is an admitted fact that the contractor used to pay wages to the claimant. No evidence has been brought over the record by the claimant to show that the management could exercise disciplinary control over him. Out of facts detailed above it stood established that the claimant has not been able to pinpoint that the contract entered into between the management and the contractor was sham and bogus. No evidence was brought over the record to show that the said contract was a perfect paper arrangement. There is a complete vaccum of of evidence to show that the contract was entered into with a view to evade labour legislations. No eyebrow could be raised about legality and genuineness of the contract, entered into between the management and the contractor. Hence it cannot be concluded that the contract was ruse. No circumstances are there to announce that the claimant would be deemed to be an, employee of the management. Services of the claimant were done away by the contractor, under these circumstances the management was not under an obligation to comply with the provisions of Section 25-F, 25-G and 25-H of the Act. There is no case in favour of the claimant to seek reinstatement in the services of the management. His claim is liable to be dismissed. Accordingly his claim is discarded. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 03-12-2012

नई दिल्ली, 11 जनवरी, 2013

का.आ. 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन आयल कार्पोरेशन लिमिटेड, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 285/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-30011/45/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th January, 2013

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 285/99) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. (Delhi) and their workman, which was received by the Central Government on 03-1-2013.

[No. L-30011/45/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 285/99

Between :

General Secretary,
Rashtriya Mazdoor Congress (INTUC),
43/16, Sector 15-A, Sector-16,
Sikandra, Agra

And

The Chairman,
Indian Oil Corporation Limited,
Refineries and Pipe Line Division,
Scope Complex,
Lodhi Road,
New Delhi.

AWARD

1. Central Govt. MoL, New Delhi, vide notification no. L-30012/45/99 IR (M) dated 26-10-99, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Indian Oil Corporation Limited, Mathura Refinery, Mathura, in not promoting Sri S. C. Sharma in the year 1987 is justified ? If not to what relief the workman is entitled ?

3. Brief facts are—

4. It is an admitted fact that the claimant Sri S.C. Sharma was posted as Technician Gr. 1 in the year 1987.

5. It is alleged by him that according to the conciliation dated 21-3-85 between the Mathura Refinery Management and the Union Refinery Karamchari Sangh, he should have been promoted for the post of Mech. Engineer (MLE), in the year 1987. Whereas Sri P. R. Gupta was promoted on 19-2-87, likewise Sri Rao and others were promoted on different dates on the post of Mechanical Engineer but the claimant has been working on Grade 1 Tech. post since 17-5-85, whereas he has become eligible and had become entitled to be promoted after completion of two years of service. But the opposite party instead of the vacancies which were in existence in the cadre did not promote the claimant for the said post. Had he been promoted in the year 1987 he would have been Sr. Engineer in the year 1995. Thus his seniority has been infrienged in not promoting him, threfore, he has prayed that he should be deemed to have been promoted with effect from 17-5-87 and he should be allowed the consequential benefit.

6. Opposite party has filed the written statement. They have opposed the claim of the claimant on several grounds legal as well as factual. It is stated that the references is bad in law. It is stated that Sr S.C. Sharma was promoted as Mech. Engineer in 1996 itself and he was not a workman as defined under Industrial Disputes Act, on 15-4-97, the date on which the I.D. was raised. It is also alleged that the federation Rashtriya Mazdoor Congress (INTUC) has no locus standi to espouse the case of the claimant or to represent him.

7. It is stated that as per the promotion policy dated 21-3-85, admitted by both the parties, signed by the recognized union and management in conciliation, the claimant was not entitled for any relief. It is stated that mere completion of the eligibility period does not entitle an employee for automatic promotion to the next high grade. Sri Sharma on completion of eligibility period has been considered along with others eligible employees for the post of Mech. Engineer by DPCs as per vacancy position and the applicable promotion policies. The copy of the promotion policy dated 21-3-85 has been filed and the opposite party has placed reliance upon clause 3.5. According to this policy the minimum eligibility period to the promotion to the next higher grade will be two years. In accordance with the above policy in the DPC held on 19-2-87 for two vacancies of Mech. Engineer under seniority channel Sri Parsu Ram and Sri K.G. Rao were recommended for promotion. At that time the claimant had not completed the eligibility period of two years in the feeder grade as on 19-2-87. In the DPC held on 15-7-87 against 5 vacancies of Mech. Engineer three under merit channel and two under seniority channel the following employees were recommended for promotion viz., Sri K. N. Singhal, Sri R. D. Ram and others. The candidates who were recommended for promotion were also senior to the claimant. Sri R. D. Ram and Sri Satya Dev both SC categories were recommended for promotion against reserve points.

Accordingly in the year 1996 the claimant was recommended for promotion to the post of Mech. Engineer as per the applicable promotion policy dated 22-7-94. It is also alleged that there has been no discrimination with the claimant nor any unfair labour practice has been adopted by IOC Limited. There has been no infringement of the constitution of India like Article 14 and 16.

8. Therefore, the claimant is not entitled for any relief.

9. In the rejoinder filed by the claimant nothing new has been given except reiterating the facts pleaded in claim petition.

10. Both the parties have produced the oral as well as documentary evidence.

11. In the documents the main stress has been given on the promotion policy dated 21-3-85 which is admitted by both the parties. Both the parties have filed a calculation chart of the existing vacancies like paper no. 8/15 which is relevant to determine the fate of the case.

12. Claimant has produced himself as W.W. 1 and the opposite party has produced Sri Dilip Banerjee as MW 1 who is senior personnel administrative officer.

13. I have gone through the oral as well as documentary evidence and heard the arguments at length.

14. It is contended by the AR of the management that vacancies resulting from death retirement or resignations of employees, in that case management has a right to reorganize or rationalize the company.

15. Therefore, a short question to be decided is that whether the management was bound to fill up back log or the vacancies which may have accrued after the cutoff date which is 1-10-83 under the policy dated 21-3-85.

16. The management has placed reliance upon a decision Mngt. Of Hindustan Lever Limited versus Administration of Delhi, 1977 (34) FLR page 150 Delhi. In this case the Hon'ble High Court, up-held, if a reorganized scheme has been adopted by the employer for reasons of economy and convenience the fact that its implementation would lead to the discharge of some of the employees would have no material bearing. It is also held that the workman cannot raise any objection if the management rationalizes its work in such a manner that it can do without filling the post of persons who cease to work in the company by reason of retirement etc.

17. Similarly they have placed reliance upon a decision-2007 (119) FLR 718 SC Union of India & Sangram Kesari Nayak - wherein the Hon'ble Apex Court held -the person has a right to be considered for promotion but he cannot claim the promotion as a fundamental right -right of promotion can be curtailed for a valid reason.

18. In the present case, therefore, I have examined the vacancies of the year 1987. In the 1st DPC held in Feb, 87 the claimant was not eligible. This fact has been admitted by him. In the second DPC held in July 87, the name of the claimant was considered and after consideration 7 person viz., Sri R. K. Gupta, KG Rao and others have been promoted. This is also an admitted fact that those persons who have been promoted were senior to the claimant. In this way also his right has not been infringed. In the year 1987 there were 14 vacancies which have accrued and out 14 vacancies 7 person have been promoted which have been shown in column no. 8 of paper no. 8/15. In the year 1987 the management has not recruited any post against these vacancies in the direct quota. Therefore, if the management is not willing to fill up back log of the vacancies which may have accrued since the cutoff date, I think according to the decision of the Hon'ble Apex Court and the Hon'ble High Court, the management is not violating any provisions of law or any breach of settlement policy. I have inquired from the AR of the WR whether there is any mandatory provision in the aforesaid policy to carry forward the vacancies of the year 1983 and onwards. He has not been able to show any such provision. Therefore, it cannot be said that the management has violated the provision of the policy.

19. It is not the case of the claimant that some juniors have been promoted and his right has been infringed in not considering him, as already said in the year 1987 two persons were promoted against the reserved vacancies and the rest 5 were senior to the claimant. As such it cannot be said that the management had adopted any unfair labour practice.

20. It is contended by the opposite party that only two DPCs were held. No third DPCs was held as claimed by the claimant. I believe the contention of the opposite party.

21. Therefore, on this point I have considered the evidence as well as the decision of Hon'ble Apex Court and I found that the vacancies which may have accrued in the year 1983 and onwards if not filled then management was not bound to fill up the back log of the vacancies at the time of promotion. Management has properly considered. the promotion in the year 1987. According to the DPC there is no breach of the provisions.

22. It is also contended by the opposite party that Sri Sharma was not a workman when the dispute was raised, as he has already been promoted in the year 1996 as Mech. Engineer and his Job was to supervise the work of workmen working under him. It is alleged that the dispute is highly belated and he was not the workman when the present dispute was raised by the union. It is a fact that the dispute was raised before the conciliation officer in the year 1997 whereas the grievance of the claimant is of the year 1987. When he raised the dispute admittedly he was working in supervisory capacity, therefore, he was not a workman at that time.

23. It is also contended that the dispute raised by the Union of the claimant is not competent union.

24. Therefore, I have considered all the aspect of the case I found that the claimant is not entitled to any relief on the facts alleged by him. The action of the opposite party is not wrong in not promoting him in the year 1987.

25. Therefore, the claim is decided against the claimant and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिविल एविएशन ट्रेनिंग कालेज बावरोली, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 2/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-11012/12/2001-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th January, 2013

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2002) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Civil Aviation Training College (Bamrauli, Allahabad) and their workman, which was received by the Central Government on 3-1-2013.

[No. L-11012/12/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 2/2002

Between :

Sri Munna Lal Kushwaha,
S/o Sri Ram Nath Kushwaha,
35/38, Kushwaha Nagar,
Poghat Bamrauli,
Allahabad.

And

The Principal,
Civil Aviation Training College,
Bamrauli, Allahabad.

AWARD

1. Central Govt. MoL, New Delhi, vide notification no. L-11012/12/2001 IR (M) dated 6-08-01, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Civil Aviation Tranining College, Bamrauli, Allahabad, in terminating the services of Sri Munna Lal Kushwaha, with effect from 01-11-99, is justified? If not to what relief the workman is entitled to?

3. In the instant case after receipt of the reference order from the MoL, New Delhi, registered notices were issued to the concerned contesting parties for filing of their claim and counter claims. But after affording of adequate opportunities to the claimant concerned he did not adduced any oral or documentary evidence in support of their claim. Likewise no evidence documentary or oral has been adduced by the opposite party.

4. According to the settled legal position of law it is the claimant who has to establish his claim before the Tribunal first and the opportunity is given to the other side to counter the same by adducing oral or documentary evidence. Since no evidence oral or documentary evidence has been adduced from the side of the claimant, therefore, it will be absolutely a futile exercise on the part of the tribunal to call the opposite party to adduce evidence in the case as claimant himself has failed to file cogent evidence in support of his claim.

5. Therefore the tribunal is left with no other option but to hold that the claimant in the instant case is not entitled for the relief claimed by him for want of evidence. As such the tribunal is of definite opinion that the claimant is not entitled for any relief and the reference is liable to be decided against the claimant and in favour of the opposite party.

6. Accordingly reference is answered against the claimant and in favour of the opposite party.

7. Reference is accordingly decided in above terms

RAM PARKASH, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान स्टील वर्क्स कंस्ट्रक्सन लिमिटेड, कोलकाता एवं मैसर्स सेनापति इन्टरप्राइजेज, उड़ीसा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-29011/13/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th January, 2013

S.O. 331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of M/s. Hindustan Steel Works Construction Ltd. (Kolkatta) & M/s. Senapati Enterprises, (Odisha) and their workman, which was received by the Central Government on 3-1-2013.

[No. L-29011/13/2012-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

SHRI J. SRIVASTAVA, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 13/2012

Date of Passing Order—23rd November, 2012

Lok Adalat

Between :

1. Chairman-cum-Managing Director, M/s. Hindustan Steel-Works Construction Ltd., (A Government of India Undertaking) registered office P/34A, Gariahat Road (South), Dhaturia, Office—Commissariat Road, Hastings, Kolkatta-700022.

2. The General Manager (P &A), M/s. Hindustan Steel-Works Construction Ltd., (A Government of India Undertaking), Commissariat Road. Hastings, Kolkatta-700022, West Bengal.

3. Asst. General Manager, M/s. Hindustan Steel-Works Construction Ltd., (A Government of India Undertaking), Rourkela Steel Plant Premises, At/Po. Rourkela -769 011, Dist. Sundargarh, Orissa.

4. M/s. Senapati Enterprises, C/o. Subash Chandra Senapati, At/Po. Daily Market, P.O. Rourkela-1. Distt. Sundargarh, Odisha.

. . .Ist Party-Managements.

And

Jaynarayan Karua

C/o N.K. Mohanty,
General Secretary,
Ispal Labour Union,
Qtrs. No. G/294,
Sector - 19, Po.
Rourkela - 769005,
Dist. Sundargarh,
Orissa. . . . 2nd Party-Workman.

Appearances :

Shri Jitendra Kumar Chief Projects Manager	For the 1st Party-Management No. 1 to 3.
Authorized Representative.	For the 1st Party-Management No. 4
Shri Jayanarayan Kaura	For himself-2nd Party-Workman.

ORDER

Case taken up today before Lok Adalat. Authorized representatives for the 1st Party-Management No. 1 to 4 and the 2nd Party-workman in person are present.

2.This case has been filed directly by the applicant Shri Jaynarayan Karuaha against the Management of M/s. Hindustan Steel-Works Construction Limited and others for adjudication of an industrial dispute existing between them. During pendency of this case the Government of India in the Ministry of Labour has referred the same industrial dispute in respect of the present workman and four others. Hence the 2nd Party-workman has moved a petition dated 16-10-2012 for withdrawal of ID. Case No. 13/2012 filed by him. The authorized representatives appearing for the 1st Party-Management No. 1 to 4 have not opposed the petition filed by the 2nd Party-workman. Hence the petition of the 2nd Party-workman is allowed and he is permitted to withdraw the case registered under ID. Case No. 13/2012.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 332. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम, कोयम्बत्तूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-17012/27/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th January, 2013

S.O. 332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2012) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation Coimbatore and their workman, which was received by the Central Government on 3-1-2013.

[No. L-17012/27/2011-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 12th December, 2012

Present : A. N. JANARDANAN Presiding Officer

Industrial Dispute No. 14/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of LIC of India and their Workman]

Between

Sri R. Sayee Naga Vadivel — 1st Party Petitioner

Vs.

The Manager (P & IR)
LIC of India, P.B. No. 3810
India Life Buildings, Trichy Road
Coimbatore-641018 — 2nd Party/Respondent

Appearance :

For the 1st Party Petitioner — M/s G. B. Saravanabhavan, Advocate

For the 2nd Party Management : — Sri M.R. Dharani Chander, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L- 17012/27/2011-IR(M) dated 14.03.2012 has referred the dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of Life Insurance Corporation of India, Coimbatore, in withholding annual increment, incentives and other fringe benefits to the petitioner Sri R. Sayee Naga Vadivel, Development Officer, Perundurai Branch, is legal and justified? What relief the workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 14/2012 and issued notices to both sides. Both sides entered appearance through their Advocates and First Party filed Claim Statement. Respondent did not file any Counter Statement.

3. While so at the instance of the Petitioner/Second Party, an IA No. 101 of 2012 was filed for heating regarding the maintainability of the dispute and jurisdictional competency of this Tribunal raising contentions in the supporting affidavit as follows :

The dispute is regarding the withholding of normal grade increments and others benefits under Section-2(A)2 of the ID Act as an individual dispute in respect of the Respondent, a Development Officer with gross salary of Rs. 36,654 supervising 19 agents. Investigation 'revealed the Respondent being involved in temporary misappropriation of funds of LIC in regard to which Vigilance Case No. 627 has also been registered. He has not been terminated. The dispute is not maintainable under Section 2(A)(2) under which the individual workman can raise dispute only if dismissed, discharged or terminated. Under Section-2(k) Industrial Dispute is, inter-alia only dispute between employers and workmen. Industrial dispute under Section-2(1) includes even the question of status. Under Section-2(k), a dispute being not espoused by the Union or group of workmen the dispute is not maintainable. Under Section-2(A)(2), a dispute can be raised by workman only if it is dismissal, discharge or termination. Respondent is not a workman. He is a Development Officer. He is supervising 19 agents. Respondent has already filed Writ Petition No. 29883 of 2011 before Hon'ble High Court of Madras for the same relief. Hence also it is to be dismissed. He can choose only any one of the fora on the same cause of action. The dispute is only to be dismissed.

4. The counter affidavit contentions on behalf of the Respondent/First Party are as follows :

Due to Anti-Money Laundering Act the concerned agents were unable to pay the initial payment in cash exceeding Rs. 50,000. So Branch Managers in discretion had permitted the agents to pay the premium in the form of cheque. LIC Agent, Sri K.P. Paramasivam had arranged the cheques in question in favour of LIC with the permission of the Branch Manager. The cheques were returned after six months stating insufficiency of fund from the LIC Bankers. While accepting third party cheque payments, Branch Office failed to comply with mandatory procedures. Petitioner maintained purview considering Unit Linked Insurance Policies, subject matter of the dispute. The culprit is being saved by the Branch Manager in victimizing the petitioner. He did not know about the vigilance enquiry registered in 2009. For withholding increments and benefits, official order should have been given to the employee. The act of the Management is arbitrary, unilateral and against natural justice. He is being denied various facilities in victimization denying on par treatment with his counterparts. The ID is maintainable under Section-33(C)(2). He is to be held as workman. He is Development Officer expected to assist and inspire the agents with no control over them. The agents are not his subordinates. He is not in administrative or managerial cadre. There is no provision ousting the Industrial Court. It is one thing to say that rules may provide terms and conditions of service but it is another thing to say that person is entitled to avail his human right of access to justice to get his grievances adjudicated before an independent forum. The IA may be dismissed.

5. The question for consideration was :

"Whether ID is not maintainable for want of jurisdictional competency ?"

6. Heard both sides. Perused the records and decisions relied on either side. Vis-a-vis the rival contentions I am led to the conclusion that the ID raised by the workman is discernibly under Section-2(k) which is not authorized by a single workman. The purported claim of the petitioner for the benefits viz. for grant of annual increments and other benefits withheld by the Government in view of some disciplinary action in contemplation against the employee and the pendency of a vigilance case against him, called in question herein is not a dispute regarding his non-employment which alone when raised by an individual workman can be deemed to be a dispute raised under Section-2(A) as an industrial dispute. Again this is a reference made by the Government under Clause-(d) of Sub-Section-(i) and Sub-Section-2(A) of Section-10 of the ID Act. This is not a claim under Section-33(C)(2) of the ID Act as claimed by the petitioner/workman. The case of the petitioner is misconceived for that reason. His claim falling short of any non-employment by way of dismissal, discharge or termination and being for some benefits which the management has withheld temporarily for apparently valid reasons disclosed, are not entertainable in this forum for various reasons projected by the Management though which is not obviously for the reason that by reason of he being a Development Officer supervising 19 agents under him he is not to be treated as a workman. It is in view of the decision of the Supreme Court in LIC OF INDIA VS. R. SURESH DATED 14-03-2008. In Appeal (Civil) 2004 of 2008, the extract of which is as follows. "The agents are not his subordinates. In the circumstances, he is not a person in administrative or managerial cadre and as such was held to be a workman within the meaning of Section-2(s) of the Industrial Disputes Act".

7. While the above contention that the petitioner is not a workman and therefore the ID is not maintainable, the same has to be reversed for other good reasons discussed above the ID is to be still found not maintainable and the claim is to be dismissed in toto. They are that the dispute is an individual dispute and not one espoused by any Union or any workman or number of workmen. The espousal by the individual workman is not at all maintainable. Again the same matter has been pending before the Hon'ble High Court of Madras in Writ Petition No. 29883/2011 for the same relief based on the same cause of action. Though some other grounds alleged and averred in the Counter Respondent on behalf of the Respondent challenging the dispute are not sustainable in view of settled positions of law. But on the aforesaid two grounds this ID is only to be answered as not maintainable. Therefore allowing this IA the ID is to be found to be not maintainable and is therefore liable to be dismissed.

8. In view of the above discussion it has already been found that the ID raised at the instance of the workman under Section-2(k) of the ID Act, 1947 without the junction of any other workman or group of workmen is not maintainable. The other ground is that the same matter has already been within the purview of the Hon'ble High Court of Madras in WP No. 29883/2011 for the same relief and on the same cause of action. The present claim is therefore non-suited for more than one count. The Interlocutory Application at the instance of the Second Party/Petitioner for deciding the maintainability of the dispute and the jurisdictional competency of this Tribunal having been considered and decided, being upholding the contention that the dispute, espoused by a single workman is not maintainable. The present ID ceases to be maintainable or entertainable before this Tribunal. The dispute, in its fabric, not satisfying the attribute of an industrial dispute but being only an individual dispute, this Tribunal is devoid of jurisdiction to entertain the same. Hence the dispute is liable to be dismissed as being not maintainable.

9. Resultantly the ID is dismissed as not maintainable.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12 December, 2012

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner None

For the 2nd Party/Management None

Documents Marked :-

From the Petitioner's side

Ex.No.	Date	Description
	N/A	

From the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 14 जनवरी, 2013

का.आ. 333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 55/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/424/1996-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 14th January, 2013

S.O. 333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/1997) of the Central Government Industrial Tribunal/Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 14-01-2013.

[No. L-22012/424/1996-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE NO. 55 OF 1997

PARTIES : The management of Parbelia Colly, M/s. ECL, Burdwan

Vs.

The Treasurer, CMU (INTUC), Asansol (WB)

REPRESENTATIVES:

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 19-12-2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/424/96-I.R. (C-II) dated 29.08.97 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Parbelia Colliery of ECL in not referring the injured workman, Sh. Dahari Rabidas, CCM Mazdoor, to the Disability Board is legal and justified? If not, whether the dependent of the workmen is entitled for dependent employment? If so from which date?"

Having received the Order of Letter No. L-22012/424/96-I.R. (C-II) dated 29-08-97 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 55 of 1997 was registered on 15-09-1997 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since long. It seems that the workman is not interested to proceed with the case any further. The case is also too old —in the year, 1997. Hence, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 77/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/2/2000-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 14th January, 2013

S.O. 334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 14-01-2013.

[No. L-22012/2/2000-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 77 OF 2000

PARTIES : The management of Dhemomain Colly., M/s. ECL Burdwan

Vs.

The Working President, KKSC, Asansol (WB)

REPRESENTATIVES:

For the management : None

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 11-12-2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India

through the Ministry of Labour vide its Order No. L-22012/2/2000-I.R. (CM-II) dated 08-08-2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Dhemomain Colliery under Sodepur Area of M/s. ECL in dismissing the services of Sh. Baidyanath Hembram, Hammerman w.e.f. 11-11-98 and denying to reinstate him into services with full back wages and benefits is legal and justified ? If not, to what relief the workman is entitled?"

Having received the Order of Letter No. L-22012/2/2000-I.R. (CM-II) dated 08-08-2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 77 of 2000 was registered on 06-09-2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since long. It seems that the workman is not interested to proceed with the case any further. Hence, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 65/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/247/1995-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 14th January, 2013

S.O. 335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 14-01-2013.

[No. L-22012/247/1995-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 65 OF 1995

PARTIES : The management of Ratibati (R) Colly., M/s. ECL Burdwan

Vs.

The Jt. Gen. Secy., CMU (INTUC), Ukhra (WB)

REPRESENTATIVES:

For the management : Shri P.K. Das, Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 11-12-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/247/95-I.R.(C-II) dated 16-11-95 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chapuikhas Colliery under Satgram Area of ECL in terminating the services of Sh. Ramdhani Gope, U.G. Loader w.e.f. 25-09-88 under clause 9.4.3. of NCWA. IV and Simultaneously denying employment to the dependents Smt. Gulzari Devi under clause 9.4.3. of NCWA. IV was legal and justified? If not, to what relief the concerned workman and his dependants are entitled?"

Having received the Order of Letter No. L-22012/247/95-I.R. (C-II) dated 16-11-95 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 65 of 1995 was registered on 07-08-96 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and

a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since long. It seems that the workman is not interested to proceed with the case any further. Hence, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्ट बंगाल मिनरल डवलपमेंट ट्रेडिंग कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 165/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-29011/36/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th January, 2013

S.O. 336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 165/99) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. West Bengal Mineral Development Trading Corpn. Ltd. and their workman, which was received by the Central Government on 3-01-2013.

[No. L-29011/36/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 165 OF 1999

PARTIES : Industrial Dispute between the Management of West Bengal Mineral Development Trading Corpn. Ltd.

Vs.

Their Workman.

REPRESENTATIVES:

For the management : Shri Swapan Kumar Sen, O. S. of the Corporation

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 21-11-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-29011/36/99-I.R..(M) dated 22-10-1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of West Bengal Mineral Development Trading Corpn. Ltd. in not giving regular status to Shri Kalidas Murmu and 9 others (List enclosed) since 01-02-94 as per the direction of the Hon'ble High Court of Calcutta and as per office order dated 07-01-1994 of the Managing Director, West Bengal Mineral Development & Trading Corporation Ltd. and not regularising the services of Shri Chandradhar Rai in the Corporation is legal and justified? If not, to what relief the workman are entitled?"

On receipt of the Order No. L-29011/36/99-IR (M) dated 22-10-1999 of the above mentioned reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 165 of 1999 was registered on 06-12-1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Swapan Kr. Sen, O.S. of the Corporation appears and files a petition stating that the workers concerned have been regularized on minimum wages with all facilities as per standing order of the Corporation. None appears for the workman. The workmen neither appearing nor taking any step since long. Since the workman have already been regularized, it appears that they are no more interested to proceed with the case further. So the case is closed and accordingly a "No Dispute" Award is passed.

ORDER

Let an award be and same is passed in terms of the above finding as No Dispute exiting. Send the two copies of the award to the Ministry of Labour & Employment, Govt. of India, , New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आयल इंडिया लिमिटेड पाइपलाइन डिविजन गुवाहाटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 16/2012) प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2013 को प्राप्त हुआ था ।

[सं. एल-30011/24/2011-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th January, 2013

S.O. 337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 16/2012) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil India Ltd. (Pipe Line Divi. Guwahati) and their workman, which was received by the Central Government on 03-01-2013.

[No. L-30011/24/2011-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri L. C. Dey, M.A., LL.B., Presiding Officer, CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 16 of 2012

In the matter of an Industrial Dispute between :—
The Management of Oil India Ltd. (Pipe Line Division), Guwahati.

Vrs.

The General Secretary, Oil India Labour Union, Oil India Ltd. (Pipeline Division), Guwahati.

Appearances :

For the Workman : Mr. L. K. Rajkanwar, Advocate

For the Management : Sri S. N. Sarma, Advocate
Sri A. Sarma, Advocate
Sri A. Jahid, Advocate.

Date of Award : 19-11-12

AWARD

1. The present reference is arising out of the Government Notification vide Memo No.-L-30011/24/2011-IR(M) Dated: 23-4-2012, in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, for adjudication of the dispute as described in the Schedule below.

SCHEDULE

"Whether the notice of Strike/Agitational programme of Oil India Labour Union dated 25-6-2011 served on the General Manager, PLS, PHQ, Narangi, Guwahati, demanding benefits of settlement dated 11-8-2010 between the management of Oil India Limited, Duliajan and Assam Petroleum Workers Union & Assam Toilo Shramik Sansthan Union, is legal and justified? What relief the workmen are entitled to?"

2. On receipt of the reference notices were duly served upon the Parties. The Management side appeared with their learned Advocate and submitted Vokalatnama. The Union is represented by Mr. Amal Sarma, General Secretary, Oil India Labour Union and the learned Advocate Mr. L. K. Rajkanwar. The Union has submitted petition No. 75 with prayer for amalgamation of this proceeding with the Reference Case No. 2/2012 on the ground that this Reference relate to the same issue and the terms of reference of which have already been covered by the terms of reference made in the reference case No. 2/2012 between the same parties and the said reference No. 2/2012 is pending before this Tribunal, as such, there are reasons that in the event of both the cases are allowed to be amalgamated, the purpose of adjudication of instant case will be served. Heard both the sides. Learned Advocate for the management submitted that since the terms of reference and the parties are same in both the proceedings, there is no need to amalgamate this reference along with the reference No. 2/2012 as it will create multiplicity of proceeding involving submission of WS and taking of steps separately on the issue which is included in the issue/Schedule of Ref. Case No. 02/2012. He also added that if both the cases are adjudicated it will be nothing but futile exercise and hence, he prayed for disposing of this proceeding. Learned Advocate for the Union verbally conceding the submission of the learned counsel for the Management stated that the relief as sought for in the Ref. Case No. 2/2012, if granted, will serve their purpose and expressed his no objection to the prayer for disposal of the proceeding.

3. I have gone through the record of this proceeding and the terms of reference and also the record of Reference Case No. 2/2012 along with the terms of reference. It is found that the very purpose of this adjudication is to decide whether the demand for the benefits of settlement dated 11-8-2010 between the Management of Oil India Ltd., Duliajan and Assam Petroleum Workers' Union and Assam Toilo Shramik Sansthan Union is legal and justified ? The Reference Case No. 2/2012 was initiated consequent upon the failure of conciliation in the event of the threat of

agitation given by the workers Union. The Schedule of Reference No. 2/2012 is as under :

"Whether the demand of the Oil India Labour Union on the *management* of OIL in its Pipe Line Division, Guwahati demanding extension of the benefits of the settlement dated 11-8-2010 to the listed WCL workers [WCL(P)/WCL] of OIL Pipeline Division working in other locations at par with the listed WCL workers working at Duliajan and Moran of the same Pipeline Division is justified ? If so, to what relief the workmen are entitled ?"

4. Thus it is clear that the relief claimed in this proceeding is covered by those in Ref. Case No. 2/2012. In view of the submissions of learned counsels for both the sides and taking in to consideration the content of Schedule of both the proceedings I find no reason to reject the prayer of learned counsel for the Management as the learned counsel for the workmen and the General Secretary of the Union also verbally conceded to the submission of counsel for the Management. In the result, this Reference is disposed of without any relief.

5. With the observation indicated above, the reference stands disposed of.

6. Prepare no relief award and send the same to the Ministry as per law.

Given under my hand and seal of this Court on this 19th day of November, 2012 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 14 जनवरी, 2013

का.आ. 338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर, डिपार्टमैन्ट ऑफ टेलीकमनिकेशन, भोपाल और अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी एन सी/आर/315/99, 317/99, 318/99, 319/99, 335/99, 336/99, 34/2000 और 147/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-01-2013 को प्राप्त हुआ था ।

[सं. एल-40012/238, 236, 235, 234, 280, 279, 301/1999-आईआर(डीयू) सं एल. 40012/250/2000-आईआर (डीयू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th January, 2013

S.O. 338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/315/99, 317/99, 318/99, 319/99, 335/99, 336/99, 34/2000 and 147/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. Of Telecommunication, Bhopal & others and their workman, which was received by the Central Government on 09-01-2013.

[No. L-40012/238, 236, 235, 234, 280, 279, 301/1999-IR(DU), No. L-40012/250/2000-IR(DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Presiding Officer : Shri Mohd. Shakir Hasan

Case No. CGIT/LC/R/315/1999

Shri Kailash Rao
S/o Waji Rao,
R/o Berchamandi,
Marathamohalla,
Nr. Railway Station,
Shajapur ... Workman

Versus

The Chief General Manager,
Deptt. of telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/317/1999

Shri Kamal Kishore Rathore,
S/o Santoshilal Rathore,
R/o Nenavath, Teh. Tarana,
Distt. Ujjain. ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication, Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/318/1999

Shri Shri Hukum Singh Rajput
S/o Bhairav Singh,
Vill Nenavath, Teh. Tarana,
Distt. Ujjain ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/319/1999

Shri Sawir Khan,
R/o Vill. : Barodh,
Teh.: Barodh, Shajapur ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/335/1999

Shri Om Prakash Rathore,
S/o Rameshwar Rathore,
Vill. Nenavath,
Tehsil Tarana,
Distt. Ujjain ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/336/1999

Shri Ibrahim Khan,
S/o Rashid Khan, H.No.22,
Jyotinagar,
Distt. Shajapur ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/34/2000

Shri Kishanlal,
S/o Bherolal,
R/o A.B.Road, Abhaypur,
Distt. Shajapur ... Workman

Versus

The Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

Case No. CGIT/LC/R/147/2000

Shri Shri Sujaan Singh,
S/o Ramdayal,
R/o Nohar Khurd,
P.O. Noharkalan,
Lalitpur (UP) ... Workman

Versus

The Telecom District Engineer,
Shajapur (MP)
The Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road,
M.P. Circle, Bhopal (MP) ... Management

AWARD

Passed on this 7th day of December, 2012

1. (a) The Government of India, Ministry of Labour *vide* its Notification No. L-40012(238)/99-IR(DU) dated 21-10-99 has referred the following dispute for adjudication by this Tribunal :—

> " Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Kailash Rao S/o Waji Rao w.e.f. 26-3-99 is justified? If not, to what relief the workman is entitled ?"

(b) The Government of India, Ministry of Labour *vide* its Notification No. L-40012(236)/99-IR(DU) dated 21-10-99 has referred the following dispute for adjudication by this Tribunal :—

> " Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Kamal Kishore Rathore, S/o Shri Santoshilal Rathore w.e.f. 31-3-99 is justified ? If not, to what relief the workman is entitled ?"

(c) The Government of India, Ministry of Labour *vide* its Notification No. L-40012(235)/99-IR(DU) dated 21-10-1999 has referred the following dispute for adjudication by this Tribunal :—

> "Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Hukum Singh Rajput S/o Bhairav Singh w.e.f. 31-3-99 is justified ? If not, to what relief the workman is entitled ?"

(d) The Government of India, Ministry of Labour *vide* its Notification No. L-40012(234)/99-IR(DU) dated 21-10-99 has referred the following dispute for adjudication by this Tribunal :—

> "Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Sawir Khan w.e.f. 26-3-99 is justified ? If not, to what relief the workman is entitled ?"

(e) The Government of India, Ministry of Labour *vide* its Notification No. L-40012(280)/99-IR(DU) dated 19-11-99 has referred the following dispute for adjudication by this Tribunal :—

> " Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Om Prakash Rathore w.e.f. 31-3-99 is justified? If not, to what relief the workman is entitled ?"

(f) The Government of India, Ministry of Labour vide its Notification No. L-40012(279)/99-IR(DU) dated 19-11-99 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Ibrahim Khan, S/o Rashid Khan w.e.f. 26-3-99 is justified ? If not, to what relief the workman is entitled ?"

(g) The Government of India, Ministry of Labour vide its Notification No.L-40012(301)/99- IR(DU) dated 27-1-2000 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Chief General Manager Telecom in terminating the services of Shri Kishanlal S/o Shri Bherolal w.e.f. 26-3-99 is justified ? If not, to what relief the workman is entitled?"

(h) The Government of India, Ministry of Labour vide its Notification No. L-40012(250)/2000-IR(DU) dated 29-8-2000 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Sujaan Singh S/o Ramdayal w.e.f. March, 1997 is justified ? If not, to what relief the workman is entitled ?"

2. All the eight references are taken up together as all are on common subject matter and on common issues.

3. The case of all the workmen in short is that the workmen were engaged by the Sub Divisional Engineer, Telecom, Shajapur in between 1986 to 1988 and worked till 1997 to 1999 when they were terminated without notice and without payment of retrenchment compensation in violation of Section 25 F of the Industrial Disputes Act, 1947 (in short the Act, 1947). It is stated that on the direction of the Hon'ble Supreme Court in a case reported in AIR 1987 S.C. 2342, a scheme was formulated on 7-11-89 for regularization to the casual labours engaged before 1985. The scheme was challenged before the CAT, Delhi Bench in O.A.No. 1476/90 wherein it was directed to consider all the casual labours for regularization. It is stated that the workmen had worked more than 240 days in each calendar year as they had worked continuously. It is submitted that the order of termination be set aside with direction to the management to regularize them In service.

4. The management appeared and filed Written Statement. The case of the management, inter alia, is that the workmen were never engaged in the Sub-Division as such the question of regularization does not arise. Since the workmen were not engaged, the question of regularization does not arise. The Section 25 F of the Act, 1947 is not applicable. It is submitted that the workmen are not entitled to any relief.

5. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether there is relationship of employer and employee between the management and the workman ?

II. Whether the action of the management in terminating the services of the workmen in between 1997 to 1999 is justified ?

III. To what relief the workmen are entitled ?

6. Issue Nos. I & II

Both the issues are taken up together for the sake of convenience. The workmen are examined in support of their cases. They have stated that they worked continuously till they had been terminated from services without notice and without payment of any compensation. They have stated that no advertisement was published for appointment nor their names were recommended by the Employment Exchange. They had not been given any appointment letter. There is nothing to show that they had been paid by the management and controlled by the management. This shows that there is no chit of paper to show that they had ever worked with the management. These workmen have been suggested by the management that they had never worked with the management.

7. The learned counsel for the workman argued that an application dated 26-6-2003 was filed before the Tribunal for direction to the management to produce documents in Court and the management was directed to file documents in Court but the documents were not filed. It is submitted that adverse inference is to be drawn. The learned counsel for the management submitted that there is a specific case of the management that they were never employed by the management. As such the question of availability of any document does not arise. The workmen have not shown any chit of paper that they were employed by the management. The workmen had filed certified copies of the record of the Asst. Labour Commissioner (in short ALC) obtained under Right to Information Act. The workmen have filed the depositions of two witnesses namely Shri Umrao Singh and Shri Sheokant Pandey. These witnesses were examined before the ALC by the workmen. The management had not tested the verocity of the evidence of these witnesses. It appears that these witnesses are not examined by the non-applicant before the ALC. Thus the evidence of these witnesses cannot be

relied in the reference case who are not examined in this case and has only corroborative value. It appears that the workmen had also not filed any document before the ALC to show that they had ever worked with the management as has been claimed by them. Thus the papers of the record of the ALC filed by the workmen are not sufficient to establish relationship of employer and employees between the management and the workmen.

8. On the other hand, the management has examined only one witness namely Shri Diwakar Jain.He is examined in all the cases of the workmen and has given the same evidence. He is Sub-Divisional Engineer (Legal) in the office of TDM, Shajapur. He has supported the case of the management that the workmen were never engaged by the management. He has been cross-examined at length but there is nothing in his evidence to establish that these workmen ever worked with the management.

9. The learned counsel for the workmen urged that the Written Statements are filed separately in all the cases of the workmen and are not signed by the parties. The lawyer of the management had simply signed at the time of submission of the written statement. It is submitted that there is no pleading of the management. It is submitted that it is clear that there is no case of the management in absence of signed written statements and there is only case of the workmen. Therefore the same is to be accepted. The learned counsel for the management has filed an application stating therein that inadvertently the signature of the non-applicant/management was left on the written statements filed by them. The management has filed replica of the written statements in all the cases duly signed by the non-applicant/management. It is stated that it is mere a technicality. He has relied a decision reported in AIR 1997 S.C.3 United Bank of India Vrs. Naresh Kumar and others. The Hon'ble Apex Court has held that—

> "It cannot be disputed that a company like the appellant can sue and be sued in its own name under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule I of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29, Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of Code of Civil Procedure as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorized to sign the pleadings on behalf of the company for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratifications can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its Officer."

Thus it is clear that the defect is curable and the management has filed replica of the Written Statement duly signed by the management. On the basis of the discussion made -above, it is evident that there is no relationship of employer and employee between the management and the workmen and therefore the question of termination by the management to the alleged workman does not arise. These two issues are decided against the workmen and in favour of the management.

10. Issue No. III

Considering the evidence adduced in the case, it is clear that the alleged workmen are not entitled to any relief. Accordingly the reference is answered.

11. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बेंगलूर के पंचाट (संदर्भ संख्या सीआर 20/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-01-2013 को प्राप्त हुआ था ।

[सं. एल-12011/13/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. CR 20/2009) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 15-01-2013.

[No. L-12011/13/2009-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan",
G.G. Palya, Tumkur Road,
Yeshwantpur, Bangalore—560 022.

Dated : 31st December, 2012

Present : Shri S. N. Navalgund,
Presiding Officer

C. R. No. 20/2009

I Party	II Party
The Assistant Secretary, Canara Bank Staff Union, 'Santrupthi', Near Adarsha High School, Marmar PO, Padil, Mangalore—575 007.	The Assistant General Manager, Canara Bank, HRM Section, Circle Office, IMA Building, Baillapanavarnagar, Hubli—580 029.

Appearances

I Party	: Shri C. R. Patil, Advocate.
II Party	: Sri T. R. K. Prasad, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-12011/13/2009/IR(B-II) dated 27-04-2009 for adjudication on the following schedule :

SCHEDULE

"Whether non-payment of subsistence allowance to Shri K Nagaraj from 1-6-2008 by the management of Canara Bank is legal and justified ? What relief the workman is entitled to ?"

2. Later by way of corrigendum dated 12-07-2011 the *modification* of the schedule was *made* in respect of the date as under :

"Whether the non-payment of subsistance allowance to Sri K. Nagaraj from 16-12-2007 by the management of Canara Bank is legal & justified ? To what relief the concerned workman is entitled to "

3. On receipt of the reference and its registration in CR 20/2009 when notices were issued to both the sides they entered their appearance through their Respective Advocates and claim statement of the I party came to be filed on 10-05-2010, the counter by the II party on 18-10-2010 and *rejoinder* by the I *party* on 15-11-2010.

4. After completion of the pleadings when the II party was called upon to lead evidence it examined Sh. R Guru Prasad the former Senior Manager of the II Party who was appointed as Enquiry Officer to enquire into the charges leveled against the I party workman as MW 1 and in his evidence got exhibited Ex M-1 to Ex M-18 the detailed description of which are narrated in the Annexure. Inter alia, on behalf of the I party while filing the affidavits of Sh. B M Madhav, Assistant Secretary of I party Union and Sh. K Nagaraj, Secretary of the I party Union examined them as WW-1 and WW-2 respectively. In the evidence of WW-1 got exhibited 21 documents from Ex W-1 to Ex W-21 whereas in the evidence of WW-2 got exhibited Ex W-22 to Ex W-42 detailed description of which are narrated in the annexure.

5. The relevant portion of the claim statement to consider the schedule of the reference may be stated as under :

"She K Nagaraj a member of the I party Union who was working as Clerk in the Hiriyur Branch of the II party was placed under suspension by Order of the II Party bearing No. HUB/BAC/2006 dated 04-11-2006 which came to be served on him on 16-12-2006 and there after he was issued with charge sheet bearing No. HUBCO/DAC/48/CHW/0207 dated 23-05-2007 which was not bearing the signature of any authority/competent authority as required by the provisions of Chapter II Clause 19(i) of Bi-partite Settlement and inspite of his objection with regard to the non-signature of the charge sheet the Enquiry Officer commenced the enquiry on 07-07-2007 and concluded on 14-01-2008 and ultimately on the finding given by the Enquiry Officer the impugned punishment of Dismissal from Service dated 21-05-2008 came to be passed. It is further asserted as per the provisions of the Bi-partite Settlement a suspended employee being entitled to full salary by way of subsistence allowance after one year of the suspension date inspite of his repeated requests to pay him full salary after one year of the suspension the II Party just kept on informing to refer to Clause 24 (iii) of Head Office Circular No. 333/07 dated 06-12-2007 and did not heed to his request thereby from 16-12-2007 to 02-06-2008 he was entitled for full salary by way of subsistence allowance and same being denied for no fault of his he is entitled for the same".

6. In the counter statement filed for the II party without disputing the fact that Sh. K. Nagaraj, Clerk was placed under suspension by Order No. HUB/BAC/2006 dated 04-11-2006 and same came to be served on him on 16-12-2006 and that there after he was served with charge sheet dated 23-05-2007 appointing Sh. R Guru Prasad as Enquiry Officer and Sh. R Nagaraj as Presenting Officer and that the Domestic Enquiry was commenced on 07-07-2007 and came to be concluded on 14-01-2008 and there after observing the formality of hearing the punishment of dismissal came to be passed on 21-05-2008 as well as Regulation 12 (2) (3) of the Canara Bank Service Code after one year of suspension the subsistence allowance payable would be the full salary payable to the suspended employee, it is contended the full salary after one year is payable if the enquiry is not delayed for the reasons attributable to the concerned workman or any of his representatives further contended the conclusion of the Domestic Enquiry was being delayed at the instance of Sh. K Nagaraj and his Defence Representative on account of frequent adjournments sought by them he is not entitled for full subsistence allowance as claimed by him.

7. In view of the above relevant pleadings of the parties the only point that resolve the dispute is whether the II Party proved Domestic Enquiry could not be concluded within a year for the reasons attributable to the workman and his Representative.

8. On appreciation of the relevant pleadings and undisputed documentary evidence on record in the light of the arguments addressed by the learned advocates appearing for both the sides my finding on the above point is in the Negative i.e., the delay in conclusion of the Domestic Enquiry within one year was not for the reasons attributable to the workman and his Representatives for the following reasons :

REASONS

9. It is borne out from the records the II party placed the I, party workman under suspension by its Order No. HUB/BAC/2006 dated 04-11-2006 and was able to serve the same on him on 16-12-2006 and after a gap of about six and half months issued charge sheet dated 22-05-2007 and there after by order dated 15-06-2007 appointed Sh. R Guruprasad as the Enquiry Officer and Sh. S. Nagaraj as Presenting Officer and Enquiry Officer scheduled the first date of Preliminary Enquiry on 07-07-2007 and adjourned the enquiry without giving further date with a note that date of Regular Enquiry will be informed by separate notice and then issued notice dated 10-07-2007 fixing the date of next enquiry on 31-07-2007 and the CSE sent a telegram to the Enquiry Officer dated 28-07-2007 requesting to postpone the enquiry intimating that he has informed the same to the Presenting Officer and the Branch where he was working on Telephone to intimate him (Enquiry Officer) for postponement of the enquiry as his Defence Representative is unable to secure permission with a short notice and it is the version of the Enquiry officer that he had neither received the telegram nor he had received intimation from the Presenting Officer and the Branch where the I party was working as such he placed him exparte and proceeded and when it was brought to his notice by the CSE producing material having sent a telegram to him (Enquiry Officer) dated 28-07-2007 he did set aside placing him exparte and allowed his Defence Representative to cross-examine witnesses examined in his absence on 31-07-2007. It is further disclosed from the proceedings of the enquiry that from 31-07-2007 Enquiry Officer postponed the enquiry to 20-08-2007 and through notice dated 01-08-2007 he informed the said date to the CSE informing that the enquiry would be conducted at Hiriyur on 20-08-2007 and at Bangalore on 21-08-2007, 22-08-2007 and on receipt of the said notice the CSE sent a letter to the Enquiry Officer for adjournment of enquiry scheduled on 20-08-2007 on the ground that his Defence Representative has got to attend court at Bangalore on the said date and having regard to that request the Enquiry Officer adjourned the enquiry by one day i.e. 21-08-2007. Again when the enquiry was scheduled on 07-01-2008 and 08-01-2008 both CSE and his Defence Representative made a request to Enquiry Officer that since they are appearing for the Departmental Promotional Examination scheduled on 06-01-2008 it is not possible for them to appear on 07-01-2008 and 08-01-2008 the Enquiry Officer refixed the dates to 12-01-2008 and 14-01-2008 and on those dates the CSE and his Representative did appear and Enquiry Officer concluded on 14-01-2008. Under these circumstances, the contention of the II Party non-conclusion of the Domestic Enquiry within one year from the date of suspension was for the reasons attributable to the CSE and his Representative is unacceptable. Only short time was gained by the CSE and his Defence Representative on genuine grounds whereas the II Party itself gained about six and half months time to serve the charge sheet after placing the CSE under suspension and there after the Enquiry Officer scheduled the date of Preliminary Enquiry on 07-07-2007 after loss of 44 days of serving the charge sheet and subsequent to holding the enquiry sitting on 08-10-2007 and 09-10-2007 further sitting was scheduled on 23-11-2007 and 24-11-2007 by the Enquiry Officer. Therefore, by no stretch of imagination the reason for delay of more than one year to conclude the Domestic Enquiry cannot be attributed to the CSE or his Defence Representative. Under the circumstances, the action of the II Party denying to pay the full pay and allowances after one year of keeping the CSE/I Party workman under Suspension on the ground that delay was for the reasons attributable to the CSE and his Representative is

unacceptable and unjustified and I am of the considered view that the II Party/Management is liable to pay Subsistence Allowance to Shri K. Nagaraj from 16-12-2007 till 21-05-2008 the date of his dismissal @ full pay payable to him after deducting whatever they have now paid for this period. In the result, I pass the following Order :

ORDER

The reference is allowed holding that the non-payment of full pay as Subsistence Allowance to Shri K. Nagaraj from 16-12-2007 by the Management of Canara Bank is illegal and not justified and that he is entitled for full pay as Subsistence Allowance from 16-12-2007 till the date of his Dismissal from service on 21-05-2008 after deduction to the amount actually paid to him for this period by the Management.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

List of witnesses examined before the Enquiry Officer :

MW 1 -. Sh. R Guru Prasad, Former Senior Manager.

WW 1 - Sh. B M Madhava, Assistant Secretary, I party Union.

WW 2 - Sh. K Nagaraj, Secretary, I Party Union.

Documents exhibited on behalf of the Management :

Ex M-1 — Copy of the charge sheet dated 23-05-2007 issued by the Deputy General Manager to the I party.

Ex M-2 — Copy of the order/proceedings of the Deputy General Manager dated 15-06-2007 appointing Sri R Guruprasad, Senior Manager as Enquiry Officer and Sri. S. Nagaraj, Manager as Presenting Officer.

Ex M-3 — Copy of the notice of preliminary enquiry dated 25-06-2007 issued by the Enquiry Officer to the I party.

Ex M-4 — Copy of preliminary enquiry proceedings dated 07-07-2007.

Ex M-5 — Copy of enquiry notice dated 10-07-2007 issued by the Enquiry Officer informing the first party about the date of regular enquiry to be held from 31-07-2007, till the date of completion of day to day basis.

Ex M-6 — Copy of enquiry proceedings dated 31-07-2007 (but inadvertently date mentioned as 31-08-2007) wherein Enquiry Officer has recorded that, the notice of enquiry dated 10-07-2007 to attend the enquiry on 31-07-2007 is received and acknowledge by the first party on 17-07-2007 but the first party did not attend the said enquiry on the said date.

Ex M-7 — Copy of letter dated 31-07-2007 forwarding copy of proceedings dated 31-07-2007.

Ex M-8 — Copy of notice of enquiry dated 01-08-2007, informing the first party that the enquiry will be held from 20-08-2008 till the date of completion on day to day basis at Hiriyur Branch, thereafter at Bangalore circle Office, on 21-08-2007 and 22-08-2007.

Ex M-9 — Enquiry Proceedings dated 21-08-2007 wherein the Enquiry Officer has recorded that the first party vide his letter dated 10-08.2007 requested for adjournment on the ground that his Defence Representative is busy, as such the Enquiry Officer permitted and thereafter the enquiry is held on 21-08-2007 onwards.

Ex M-10 — Enquiry proceedings dated 22-08-2007.

Ex M-11 — Enquiry proceedings dated 23-08-2007, on this day MW 6 is examined by Presenting Officer, the Defence Representative requested for adjournment to a latter date, as such the enquiry was adjourned to a later date.

Ex M-12 — Enquiry proceedings dated 08-10-2007 the enquiry which was adjourned at the instance of Defence Representative on 23-08-2007 and the same is posted on his day i.e. 08-10-2007.

Ex M-13 — Enquiry proceedings dated 09-10-2007 that after examination of some of the witnesses, the said enquiry was adjourned to 23-11-2007 to 24-11-2007 at Hiriyur Branch.

Ex M-14 — notice of enquiry dated 16-11.2007 by the Enquiry Officer to the first party, informing that the enquiry scheduled to 23-11-2007 and 24-11-2007 is postponed and it will be held on 07-01-2008 and 08-01-2008.

Ex M-15 — Enquiry proceedings dated 12-01-2008 for cross-examination of MW 1, MW 3, MW 8, and MW 11. The enquiry on the said date was adjourned to 14.01.2008.

Ex M-16 — Enquiry proceedings dated 14-01-2008, on this day continuation of examination in chief of MW 5 and conclusion of his cross examination "Enquiry Concluded".

Ex M-17 — Findings/Report of the Enquiry Officer dated 26-02-2008.

Ex M-18 — Order of punishment/Proceedings of the Deputy General Manager dated 21-05-2008.

Documents exhibited on behalf of the I Party Workman

Ex W-1 — II Party order letter No. HUBDAC : 2006 dated 04-11-2006 suspension order to 1st Party.

Ex W-2 — II Party charge sheet letter No. HUBCO:DAC:48:CHW:02/2007 dated 23-05-2007 (Unsigned charge sheet).

Ex W-3 — Enquiry proceedings dated 7-7-2007.

Ex W-4 — 1st Party sent telegram dated 28.07.2007 to the Enquiry Officer (Telegram Bill No. 2613) and Telephone bill dated 31-7-2007 - 1st party contacted over phone to the branch - Phone No. 08193227319.

Ex W-5 — Copy of the Telegram sent by 1st Party to Enquiry Officer (Certified Copy of the BSNL, Davangere).

Ex W-6 — Certified copy of the delivery of telegram at Bangalore to the Enquiry Officer by the 1st party (certified copy of the BSNL Dept).

Ex W-7 — Enquiry proceedings (ex-parte) dated 31-07-2007.

Ex W-8 — Copy of the representation dated 8-8-2007 addressed to the Disciplinary Authority by the Defence Representative.

Ex W-9 — Copy of the representation to the 1st party addressed to the Disciplinary Authority dated 9-8-2007.

Ex W-10 — Copy of the Fax Letter dated 21-8-2007 addressed to the first party, by the 2nd party at the time of enquiry at Circle Office, Bangalore at 1.45 p.m. on 21-8-2007.

Ex W-11 — Canara Bank Head Office, Bangalore issued guidelines through hand-book on disciplinary matters regarding Ex-parte enquiry and conducting of Domestic Enquiry and appeal.

Ex W-12 — Copy of the enquiry proceedings dated 21-08-2007.

Ex W-13 — Copy of the Enquiry proceedings dated 9-10-2007.

Ex W-14 — Enquiry Officer notice dated 16-11-2007.

Ex W-15 — 1st party letter dated 30-11-2007 addressed to the Enquiry Officer.

Ex W-16 — Enquiry Officer notice dated 24-12-2007.

Ex W-17 — 2nd party letter No. HUBCO : DAC.59¼ 2008 dated 22-01-2008 address to Ist party along with circular No. 333/2007.

Ex W-18 — 1st Party statement of re-joinder, Counter Statement of C R No. 20/2009 submitted in CJM Court on 15-11-2010.

Ex W-19 — Copy of the Deposition of MW 1 (EO) dated 9-6-2011 in C R No. 38/2010.

Ex W-20 — Copy of the Deposition of MW 1 (EO) dated 11-4-2011 in C R No. 20/2009.

Ex W-21 — Index & Calculation sheet & activity chart & Appeal.

Ex W-22 — Enquiry Officer notice dt. 25-6-07, addressed to K. Nagaraj.

Ex W-23 — Enquiry proceedings dt. 7-7-07, appointed Sri B. M. Madhava, Mangalore as Defence Representative.

Ex W-24 — Asst. Secretary filed statements dt. 10-9-08 on behalf of K. Nagaraj in ALC Hubli.

Ex W-25 — ALC Hubli submitted F O C dt. 9-1-09, to the Central Govt. New Delhi.

Ex W-26 — Central Govt. Order dt. 27-4-09, addressed to Asst Secretary and C.J.T. Bangalore.

Ex W-27 — ALC Hubli submitted a amendment report to Central Government dt. 20-6-2011.

Ex W-28 — Central Govt. amendment order dt. 12-7-2011, addressed to CGIT and Asst. Secretary.

Ex W-29 — Notice issued by CJT Court in respect of C R no. 20/09, addressed to Asst. Secretary, Canara Bank Staff Union and Canara Bank.

Ex W-30 — Asst. Secretary (first party) submitted a memo on behalf of the K. Nagaraj in CGIT, Court camp at Mangalore on 20-4-2010.

Ex W-31 — Counter Statement filed by 2nd Party management in C R 20/09 in CGIT Court, Dt. Nil.

Ex W-32 — Claim Statement filed by Asst. Secretary on behalf of K. Nagaraj in CJT in respect of C R 20/09.

Ex W-33 — Guruprasad MW 1 evidence in CGIT dt. 11-4-11.

Ex W-34 — A affidavit submitted by Sri B M Madhav, Asst. Secretary of Staff Union in respect of C R 20/09 in CJT on 20-9-11.

Ex W-35 — Asst. Secretary evidence given in CGIT on 10-10-11 and 11-11-11.

Ex W-36 — A memo filed on behalf of the 1st party in 20/09, by the Advocate of first party, along with a letter issued by the Secretary of Canara Bank Staff Union, Karnataka State Committee, Bangalore regarding confirmation of Sri K. Nagaraj (21823) staff of Canara Bank, Hiriyur Branch as a Member of Canara Bank Staff Union and also issued the certificate that Sri B M Madhav Asst. Secretary of Canara Bank Staff Union has raised the Industrial Dispute before ALC, Hubli on behalf of the Union in CR No. 20/09, in the CGIT Court Sri K. Nagaraj was in service when the dispute was raised by the Union on behalf of the Union. And also Vakalath filed by Sri B.M.Madhav, Asst. Secretary in CR no. 20/09 in CJT Court.

Ex W-37 — A Copy of the Salary Certificate of K. Nagaraj, for the month of March, 2003, showing that a subscription of Canara Bank Staff Union of Rs. 30 deduction particulars.

Ex W-38 — A Copy of the salary certificate of K.Nagaraj, for the month of February 2003, showing deduction of Canara Bank Staff Union subscription of Rs. 30/- addressed to advance section C O Bangalore.

Ex W-39 — A Copy of the salary certificate of K. Nagaraj, for the month of January 2003, showing deduction of Canara Bank Staff Union subscription of Rs. 30.

Ex W-40 — A copy of the salary certificate of K.Nagaraj, for the month of January 05 and Dec. 05 showing deduction of Union Subscription of Rs. 30 each.

Ex W-41 — A letter of 2 Nos. dt. 28-7-05 and 11-4-05 addressed to K. Nagaraj, copy to Branch secretary by Secretary of Canara Bank Staff Union.

Ex W-42 — A letter received by K. Nagaraj (Br. Secretary) from CBSU.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, एन. टी.सी. लि. कोयम्बटूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (81/2012) प्रकाशित करती है, जो केन्द्रीय सरकार को 08-01-2013 को प्राप्त हुआ था ।

[सं. एल-42011/07/2012-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 81/2012) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the General Manager, NTC Ltd. Coimbatore and their workman, which was received by the Central Government on 08-01-2013.

[No. L-42011/07/2012-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 18th December, 2012

Present : A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 81/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of NTC Mill and their Workmen)

BETWEEN

1. The General Secretary Coimbatore District Mill Labour Union (CITU) 78.381/127, Anupparpalayam Coimbatore-9	:	1st Party/1st Petitioner Union
2. The General Secretary Kovai Periyar Mavatta Dravida Panchalai Thozhilalar Munnetra Sangam (LPF) 162 Pankaja Mills Quarters, Pankaja Mill Road Coimbatore-45	:	1st Party/2nd Petitioner Union
3. The General Secretary Coimbatore Regional Mill Labour Union (NDLF) 32, Perumal Koyil Street, Vilankurichi Coimbatore-35	:	1st Party/3rd petitioner Union

4. The General Secretary National Textile Workers Union (INTUC) 1848 Trichy Road, Ramanathapuram Coimbatore-45	:	1st Party/4th Petitioner Union

Vs.

The General Manager NTC Ltd., NTC House, P.O. Box No. 2409 35-B Somasundaram Mills Road Coimbatore-9	:	2nd Party/Respondent

Appearances:

For the 1st to 4th Party/ Petitioner Union	:	Several Notice Called Absent
For the 2nd Party/ Management		M/s. T. S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/07/2012-IR(DU) dated 12-10-2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the NTC Mill Management, Southern Region, Coimbatore in respect of collecting union subscription for more than one union is justifiable or not? If not, what relief available to the petitioner union/employee?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 81/2012 and issued notices to both sides. Respondent appeared through advocate and Petitioners 1 to 4 constituting the First Party in the dispute in spite of having been served with notice did not appear on three consecutive posting dates of the case for their appearance, filing statement of claim complete with relevant documents, list of reliance and witnesses with copies thereof to the Respondent. When the matter stood posted from time to time for further steps and lately on 18-12-2012 for further proceeding also, petitioner were absent nor represented.

3. Points for consideration are:

(i) Whether the collection of union subscription for more than one union by the NTC Mill Management, Southern Region, Coimbatore is justjfiable or not?

(ii) To what relief the concerned petitioners are entitled? .

Points (i) & (ii)

4. In spite of service of notice for appearance the Petitioners 1 to 4 constituting the First Party in the dispute did not turn up or let in any evidence in support of their case for answering the reference. Needless to say it is upon the petitioners to substantiate their case that the collection of union subscription for more than one union by the NTC Mill Management, if not legal and justified, it is actually so. When they wish the Court to be satisfied and made believe that it is so it is for them to discharge that burden which has not been done. The inevitable conclusion is that there has not been any collection of Union subscription for more than one union, at present to hold that the same, if done is not justifiable.

5. The reference is answered accordingly.

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	None
For the 2nd Party/1st Management	:	None

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
N/A		

On the Management's side

Ex. No.	Date	Description
N/A		

नई दिल्ली, 15 जनवरी, 2013

का.आ. 341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, दूरदर्शन केन्द्र, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (सी. जी.आई.टी./एन.जी.पी./36/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/26/2009-आई आर (डी यू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGT/36/2009) of the Central Government Industrial Tribunal-Cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to The Director General, Doordarshan Kendra, New Delhi and their workman, which was received by the Central Government on 08-01-2013.

[No. L-42012/26/2009-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/36/2009 Date: 20-12-2012.

Party No. 1 : The Director General
Doordarshan Kendra, Sansad Marg, New Delhi - 110001.

: The Chief Engineer (West Zone), Doordarshan Kendra, Old COD Bldg., M.K. Road, Mumbai.

: The Station Engineer, Doordarshan Maintenance Cent, Akola, Maharashtra- 444001.

Versus

Party No. 2 : Shri Dinesh S/o Shri Uttamrao Takore R/o At. Post Dahigaon Roeha, Taluk: Anjangaon Surji, Amravati.

AWARD

(Dated: 20th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Doordarshan Kendra and their workman, Shri Dinesh Takore, for adjudication, as per letter No.L-42012/26/2009-IR (DU) dated 18-08-2009, with the following schedule:—

> "Whether the action of the management of Chief Engineer (West Zone)/The Station Engineer, Doordarshan Maintenance Centre, Akola (MS) in terminating the services of Shri Dinesh w.e.f. 22-01-2008 is legal & justified? To what relief is the claimant entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Dinesh Takore, ('the workman' in short), filed the statement of claim.

The case of the workman as presented in the statement of claim is that he was appointed orally as a motor driver in the establishment of party no.1 at Amravati w.e.f. 01-12-2004 and he was initially paid Rs. 60/- per day, which was raised to Rs. 70/- and then to Rs. 80/- per day and his services were orally terminated w.e.f. 01-03-2008 and as he was a workman, his services should not have been terminated, without compliance of the statutory provisions and the party no. 1 is an industry and he worked continuously from 01-12-2004 till the date of his illegal termination without any break and he completed 240 days of service in a year and his service record was clean and excellent and he was working in a vacant post and was expecting his regularization in service, but instead of regularizing his services, party no. 1 terminated his services illegally without compliance of the provisions of Sections 25-F and 25-G of the Act and the Industrial Employment (Standing Orders) Act, 1946 and no retrenchment compensation was paid to him, so the action of party no. 1 was arbitrary and illegal and he is unemployed from the date of termination and he is entitled for reinstatement in service with continuity and full back wages.

3. Even after sufficient service of notices, the party nos. 1(A) and 1(B) did not appear in the case. Though party no. 1(C) appeared through the advocate, he also did not file any written statement. As such, on 06-12-2010, order was passed to proceed with the case without any written statement.

4. In support of his claim, the workman filed his evidence on affidavit. As none appeared on behalf of the party no.1 to cross-examine the workman, by order dated 21-06-2012, "No Cross Order" was passed. It is necessary to be mention here that on 23-11-2012, order was passed to proceed with the case ex-parte against the party no. 1, as none appeared on behalf of party no.1 to make argument.

5. In the written notes of argument, it has been submitted by the learned advocate for the workman that the party no.1 is an industry and the workman was being asked to perform various duties, which he had performed to the utmost satisfaction of his superiors and he had worked for more than four years and he had completed more than 240 days of work in each year and as such, he was a deemed confirm employee and such facts are proved by the evidence produced by the workman and the services of the workman was orally terminated with effect from 01-03-2008, without following the due process of law and without compliance of the mandatory provisions of Sections 25- F and 25-G of the Act and no retrenchment compensation was paid to him and as the termination of the workman from services is illegal, he is entitled for reinstatement in service with continuity and full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2008 (II) CLR-301 (Maharashtra State Board of Secondary and Higher Secondary Education, Amravati Vs. Sanjay Krishnarao), 2007 (6) Mh.L.J.-769 (Zarin Nozer Desai Vs. M.S. Rawat), 2010 (4) Mh. L.J.-96 (Damodhar Vs. Deputy Engineer) 1994 II CLR-995 (Zilla Parishad, Dhule Vs. Rajendra), 1998 (80) FLR-575 (Virendra Prasad Singh

Vs. State of U.P.), 2010 (5) Mh.L.J.-244 (Anoop Sharma Vs. E.E. Public Health Division No.1), 1999 LLJ-14 (Administrator, Municipal Committee, Amloh Vs. Presiding Officer), 1992 LAB IC-1362 (Auro Engineering Vs. R.V. Gadekar) and AIR 1980 SC-1219 (Santosh Gupta Vs. State Bank of Patiala).

6. Admittedly, in this case, party no. 1 has been set ex-parte. However, in view of the settled principles of law, the workman is not absolve from the responsibility to prove that he is entitled for the reliefs claimed by him on the terms of the statute. In view of such settled principles of law, now, it is to be considered as to whether, the workman has been able to prove that he is entitled for the reliefs claimed by him.

The workman, in the statement of claim and so also in his evidence on affidavit has mentioned that he was appointed orally as a motor driver on 01-12-2004 on daily wages basis and worked continuously till he was orally terminated from service with effect from 01-03-2008 and before termination of his services, the mandatory provisions of Sections 25-F and 25-H of the Act were not complied with. It is clear from the own pleadings of the workman that his appointment was not a regular appointment or that his appointment was in regular appointment or that his appointment was in accordance with the Rules and Regulations of appointment of party no. 1.

The workman has claimed that he was entitled for the benefits as provided under Section 25-F of the Act. To avail the benefits as provided in Section 25-F of the Act, the workman is required to prove that he had completed 240 days of work in the preceding 12 calendar months of the date of the termination, i.e. 01-03-2008. It is also well settled that filing of an affidavit by a workman is only his own statement in his favour and the same cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that the workman, in fact, worked for 240 days in a year and to prove 240 day's continuous service other substantive evidence needs to be to adduced.

In this case, besides filing of his affidavit, the workman has filed copies of two documents, i.e. the certificate issued by the Assistant Engineer, T.V. Relay Centre, Amravati and car log book. On perusal of the Car log book, it is found that the same relates to the period from 01-02-2005 to 24-02-2005. The said document does not show that the workman had completed 240 days of work in the preceding 12 months of 01-03-2008. On perusal of the second document i.e. copy of the certificate issued by the Assistant Engineer, T.V. Relay Centre, Amravati, it is found that the same was issued on 05-02-2008. It is also found from the said document, it is specifically mentioned in the same that, "the certificate was given on the request of the workman for experience purpose and not for any other use." Moreover, in the said certificate, though it has been mentioned that, "the workman was working as motor driver since three years i.e. from December, 2004 till to day" (the date of issuance of the certificate), it has been specifically mentioned that, "the workman is ,working as a driver on contract basis, since November, 2007." The certificate in question has been produced by the workman himself. It is also not the case of the workman either in the statement of claim or in his evidence on affidavit that true facts have not been mentioned in the certificate issued by the Assistant Engineer or that though he was working as a Casual motor driver on daily wages basis, party no. 1 was showing and treating him a contract worker. It is clear from the own document of the workman that though he was working as a driver on contract basis, since November, 2007, he has not mentioned anything about the same in his statement of claim or in his evidence on affidavit and he has not come to the Tribunal with a clean hand.

Clause (bb) of sub-section (oo) of Section 2 of the Act provides that termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concemed on its expiry or of such contract being terminated under a stipulation on that behalf contained therein, does not amount to retrenchment.

As in this case, the document produced by the workman shows that he was engaged on contract basis from September, 2007 and the workman has not pleaded such fact and has not come up with the true facts as to how his services were terminated w.e.f. 01-03-2008, it can be held that his services were terminated due to non-renewal of the contract and such termination does not amount to retrenchment. Hence, it is held that provisions of Sections 25-F and 25-H of the Act are not applicable to his case.

In view of the peculiar facts and circumstances of the case mentioned above, with respect, I am of the view that, the decisions cited by the learned advocate for the workman have no clear application to the case. Hence, it is ordered :—

ORDER

The action of the management of Chief Engineer (West Zone)/The Station Engineer, Doordarshan Maintenance Centre, Akola (MS) in terminating the services of Shri Dinesh w.e.f. 22-01-2008 is legal & justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, टेलीकाम, बी.एस.एन.एल. हमीरपुर (हिमाचल प्रदेश) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (1297/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-01-2013 को प्राप्त हुआ था ।

[सं. एल-40012/40/2006-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1297/2007) of the Central Government Industrial Tribunal-Cum-Labour Court, No. II Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the General Manager, Telecom, BSNL, Hamirpur (HP) and their workman, which was received by the Central Government on 08-01-2013.

[No. L-40012/40/2006-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 1297/2007

Registered on 20-2-2007

Shri Rakesh Singh, S/o Sh. Dilgir Singh, Village Nalhera, P.O. Samtana, Tehsil Barsar, HP, Hamirpur.

... Petitioner

Versus

The General Manager, Telecom, BSNL, (HP), Hamirpur (Distt.).

... Respondent

Appearances

For the Workman	Sh. R.P. Rana Advocate.
For the Management	Sh. K.K. Thakur Advocate.

AWARD

Passed on 11-12-2012

Central, Government vide Notification No. L-40012/40/2006 [(IR(DU)] Dated 9-1-2007, by exercising its powers under Section 10 Sub-section (1) Clasue (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :—

> "Whether the action of the management of BSNL, Hamirpur in terminating the services of Sh. Rakesh Singh S/o Sh., Dilbag Singh, ex-casual labour w.e.f. August, 1996 and not giving him preference while engaging 34 fresh casual labour in the year 2001, is legal and justified? If not, to what relief the workman is entitled to?"

The case of the workman is that he had been engaged in October. 1995 as daily wage mazdoor. His services were terminated in August 1996. He had completed more than 240 days' service in the 12 calendar months prior to his termination, but his services were terminated without complying the provisions of the Industrial Disputes Act. He also alleged that after termination of his services 34 fresh casual labourers in his category were employed in violation of Section 25H of the Act. He has prayed for his reinstatement with full back wages and continuity of service.

The claim was contested by the management and the, engagement of the workman as daily wager mazdoor or his working with the management-department was denied for want of record. According to the management the record pertaining to work-charge is retained for three years under the Rules. Regarding the allegation of employment of 34 fresh casual labours it was said that it is wrong. There was no fresh appointment but 34 part-time casual labourers who were working with the department for less than four hours per day had' been converted into full time casual labour. According to the management the claim has no merits.

After the filing of the written statement of the management the workman did not turn up. His counsel also withdrew from the case on 15-12-2010 as he was having no instructions from his client. The workman did not file his affidavit even and case was ordered to proceed ex parte against him on 31-5-2011. On behalf of the management affidavit of Pritam Chand Dhiman, D.E (O/D), Hamirpur was filed. Management also closed its evidence.

I heard the learned counsel for the management. As there is no evidence in support of the claim statement, it is not proved that the workman was in the employment of the management and his services were terminated by the management. The reference is answered against the workman.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जरनल मेनेजर, टेलीकाम, बी. एस. एन. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (आईडी संख्या 10/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2013 को प्राप्त हुआ था ।

[सं. एल-40012/34/2010-आई आर (डी यू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Chief General Manager, Telecom, BSNL and their workman, which was received by the Central Government on 8-1-2013.

[No. L-40012/34/2010-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Industrial Dispute Case No. 10/2010

Date of Passing Award—28th December, 2012

Between:

1. The Chief General Manager, Telecom, BSNL, PMG Building, Bhubaneswer (Orissa)-751 001.

2. The Director, M/s. G.A. Digital Web World, Plot No.1, Hargovind Enclave, Vikas Marg, Exten., New Delhi - 110092.

3. M/s. Benz Infotech (P) Ltd., A/19. Sahidnagar, Bhubaneswar, Orissa -751 007

...1st Party-Managements

(And)

Their workman Miss Sasmita Nanda, At/Po. Nua Sasana, Via. Pipili, Puri

...2nd Party- Workman.

Appearances:

Shri Jogendranath Jena, A.G.M. (Legal).	:	For the 1st Party-Management No.1.
None	:	For the 1st Party-Management No. 2 & 3.
None	:	For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has sent a reference to this Tribunal for adjudication of an industrial dispute existing between the employers in relation to the management of BSNL and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No.L-40012/34/2010 - IR(DU), dated 31-5-2010.

2. The matter under dispute is mentioned under the schedule of the letter of reference which reads as follows:-

> Whether the action of the management of M/s. G.A. Digital Web World, contractor of M/s. BSNL, in terminating the services of Miss Sasmita Nanda w.e.f. 6-4-2009 is legal and justified ? If not, what relief the workman is entitled to ?

3. Whether the action of the management of M/s. G.A. Digital Web World, contractor of M/s. BSNL, in terminating the services of Miss Sasmita Nanda w.e.f. 6-4-2009 is legal and justified? If not, what relief the workman is entitled to ?

4. The 2nd Party-workman filed her statement of claim stating that she was appointed as a Call Centre agent in BSNL Call Centre, Bhubaneswar by V. Net Information System (P) Limited which was subsequently changed into name and style of M/s. Benz Infotech Private Limited, A-19, Sahid Nagar, Bhubaneswar with effect 14-6-2007 on a monthly salary of Rs. 5000. The said company was entrusted with the work of managing BSNL Call Centre, Bhubaneswar by an agreement made with Chief General Manager, BSNL, Orissa Circle, Bhubaneswar who was the principal employer. The BSNL Call Centre, Bhubaneswar is functioning on out-sourcing basis by inviting open tenders. On reappraisal of the performance of the 2nd Party-workman the said company was pleased to enhance her salary to Rs. 6000 per month with effect from 1-6-2008- Later the contract for managing the BSNL Call Centre at Bhubaneswar was awarded to M/s. G.A. Digital Web World, Plot No.1, Hargovind Enclave, Vikash Marg Extension, New Delhi for the year 2009-10 . Consequent on the change of the contractor the 1st Party Management No. 3 issued appointment letter to the 2nd Party-workman as Call Centre agent on a monthly salary of Rs. 5200 including all statutory deduction with effect 1-4-2009. The 2nd Party-workman though opposed to such deduction of wages accepted the appointment letter under threat and coercion of termination of service. On 6-4-2009 the Supervisor of the 1st Party-Management No.3 misbehaved with her by using objectionable words and in a manner to hamper the modesty of a girl. The 2nd Party-workman objected to such behaviour. The said supervisor of the 1st Party-Management No.3 suddenly asked her on the same

date not to come to office from the next date as her services are being terminated. No written order in this regard was given to her. The 2nd Party-workman informed the Sub-Divisional Engineer and Deputy General Manager of BSNL about this happening, but both of them turned a deaf ear to the request of the 2nd Party-workman and expressed their inability to interfere into the matter. Thus her services were terminated illegally and inegularly without compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. Such action of the 1st Party-Management No.3 is not only arbitrary and wilful but also based on unfair labour practice and is inconsistent with the statutory provisions of Industrial Disputes Act which is unsustainable in the eye of law. The 2nd Party-workman is entitled to be reinstated in service with full back wages and other consequential benefits with effect from 6-4-2009.

5.The 1st Party-Management No.1 in his written statement has denied the entrustment of work of managing the BSNL Call Centre, Bhubaneswar to M/s. V. Net Information System (P) Limited or to M/s. Benz Infotech (P) Limited, A/19, Sahidnagar, Bhubaneswar and also denied execution of any agreement with them. Instead it has stated that the work was awarded to M/s. TCS Limited up to 31-3-2009. There-after the work was awarded from 1-4-2009 to M/s. G. A. Digital Web World (P) Limited, New Delhi. The above firm intimated him that the 2nd Party-workman is not willing to abide by the terms and conditions laid down by their firm. Hence her service was terminated. Since the 2nd Partiy-workman was employed afresh by the new contractor, the provisions of Section 25-F of the Industrial Disputes Act, 1947 does not apply in her case. The BSNL, Orissa only ensures that the workmen of BSNL Call Centre at BJB Nagar, Bhubaneswar are being paid wages by the contractor as per prevailing labour rates. Hence the allegation made by the 2 Party-workman regarding unfair labour practice and violation of statutory provisions of the Industrial Disputes Act are not correct. The wages of the 2nd Party-workman in BSNL Call Centre, Bhubaneswar was paid through the sub-contractor of M/s. TCS Limited whose work order ceased on 31-3-2009. Hence no liability can be attached with the BSNL.

6. The 1st party-management no. 2 in its written statement has stated that the BSNL Call Centre at Bhubaneswar was taken on contract by way of tender and to run it the 2nd Party workman was appointed as Call Centre executive with effect from 1-4-2009 on a gross salary of Rs. 5200. She worked for 5 to 6 days and demanded higher pay which was not possible on the part of the 1st Party Management No.2. Thereafter she misbehaved with the management officials and other staff of the office. Later she expressed her unwillingness to work in case her salary is not enhanced and did not turn up to attend the job with effect from 06-04-2009. She has not completed 240 days of service during a period of 12 calendar months preceding the date of her absention from job. Therefore she is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947 and her claim is not maintainable. M/s. V. Net Information Systems (P) Ltd., is a separate organization and there is no functional integrity between the 1st party management no. 2 and the aforesaid establishment. The allegations regarding misbehaviour of supervisor with the 2nd party-workman is concocted and false. She was never refused to come for duty. She herself left the office in the afternoon of 6-4-2009 and did not turn up thereafter. Therefore the case as no merit and is liable to be dismissed.

7. The 2nd party workman in her rejoinder reiterated the allegations made earlier in her statement of claim.

8. The 1st Party Management No. 3 has not filed any written statement despite sending of notices.

9. Following issues were framed on the pleadings of the parties :—

ISSUES

1.Whether the action of the Management of M/s. G.A. Digital Web World. Contractor of M/s. BSNL in terminating the services of Miss Sasmita Nanda with effect from 6-4-2009 is legal and justified ?

2. If not, what relief the workman is entitled to?

10. After framing of issues the 2nd party workman was called upon to lead evidence. But, after taking an adjournment, she abstained from appearing in the court and did not participate in the proceedings. Therefore her evidence was closed. Only the 1st party management no. 1 i.e. the Chief General Manager, Telecom, BSNL, Bhubaneswar took part in the proceedings and one affidavit of Shri Jogendranath Jena was filed in evidence. The case was ordered to proceed exparte against the 1st parties management No. 2 & 3 because of their absence.

FINDINGS

ISSUE NO. 1

11. From the averments made in the statement of claim by the 2nd party workman it is brought out that she was initially appointed by M/s. V. Net Information System (P) Ltd., as a Call Centre agent in BSNL Call Centre, Bhubaneswar. Later on, the name and style of M/s. V. Net Information Systems (P) Ltd., was changed to M/s. Benz Infotech Private Ltd., which has been made party in this reference as 1st party management no. 3.M/s. Benz Infotech Private Ltd. was entrusted with the work of managing the BSNL Call Centre, Bhubaneswar by an agreement made with the Chief General Manager (Telecom), BSNL, Odisha Circle, Bhubaneswar through outsourcing by awarding contract on open tender basis. The contract awarded to M/s. Benz Infotech Private Ltd., ended on 31-3-2009 and thereafter M/s. G.A. Digital Web World, New Delhi was awarded contract with effect from 1-4-2009 for 02 years and the later started functioning from that very same date. It has been stated in the affidavit of

Shri Jogendranath Jena that prior to 1-4-2009, M/s, TCS was supplying Call Centre agents for operation of BSNL Call Centre and Miss Sasmita Nanda was one amongst them.

12. All these facts establish that the 2nd party workman was employed by M/s. Benz Infotech Private Ltd., and when its contract ceased on 31-3-2009 the 2nd party workman did not remain on its employment. On award of contract to M/s. G.A. Digital Web World, New Delhi w.e.f .4-2009 she was offered employment and appointed as a Call Centre agent on a gross salary of Rs. 5200 per month. It is an undisputed fact that the 2nd party workman left the job or discontinued from job with effect from 6/7-4-2009. Therefore she worked only for 5 to 6 days with the 1st party. management no. 2 i.e. M/s. G.A. Digital Web World. Shri Jogendranath Jena, witness of the 1st party management no. 1, i.e. the principal employer, has stated in his affidavit that M/s. G.A. Digital Web World has intimated the 1st party management no. 1 that the workman was not willing to abide by the terms and conditions laid down by them and hence her services were terminated. The 2nd party workman has not come to witness box to prove her allegations made in her statement of claim. Therefore, what has been stated by the 1st party management no. 1 in his affidavit evidence has to be accepted. Since the 2nd party workman has worked for only 5 to 6 days with the 1st party management no. 2 no benefit of Section 25- F of the Industrial Disputes Act, 1947 is accruable to her. Moreover she was a contractual worker and her services are deemed to have continued till the end of the contract period. Therefore her termination from service does not come within the definition of term "retrenchment" as per sub-clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act, 1947.

13. For the aforesaid reasons, the action of the Management of M/s. G.A. Digital Web World, contractor of M/s. BSNL in terminating the services of Miss Sasmita Nanda with effect from 6-4-2009 cannot be held to be illegal and unjustified. Issue No. 1 is therefore decided in favour of the 1st party management and against the 2 party workman.

ISSUE NO. 2

14. In view of the findings recorded in Issue No.1, the 2nd party workman is not entitled to get any relief from this Tribunal/Court.

15. The reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मोरमुगोवा पोर्ट ट्रस्ट वास्को डालिमा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोवा के पंचाट (संदर्भ संख्या आई टी 41/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2013 को प्राप्त हुआ था ।

[सं. एल-36012/2/96-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I T 41/98) of the Central Government Industrial Tribunal-cum-Labour Court, Goa now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Mormugao Port Trust (Goa) and their workman, which was received by the Central Government on 3-1-2013.

[No. L-36012/2/96-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT, GOVERNMENT OF GOA AT PANAJI

(BEFORE SMT. BIMBA K. THALY, PRESIDING OFFICER)

REF. No. IT/41/98

Shri.M. Keshavarajan, Asstt. Moulder,
Rep. by the Vice-President,
Mormugao Water Front Workers Union,
P.B. No.90, Vasco .....Workmen / Party I

V/s

The Chairman,
Mormugao Port Trust .....Employer / Party II

Shri Agnelo Diniz .....II(a)

Shri Ulhas Potekar .....II(b)

Goa Port and Dock Workers Union .....II(c)

Adv. Shri.T. Pereira for Party I.
Adv.Shri.A.C. Navelkar for Party II.
Party II (a),(b) and (c) absent, not represented.

AWARD

(Passed on this 16th day of November, 2012)

Government of India, Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of the Chairman / The Chief Mechanical Engineer, Mormugao Port Trust, Mormugao-Harbour, Goa-403803 in not promoting Shri.M.Keshavarajan, Asstt. Moulder, EME No.46536, MPT, Baina, workshop to the post of Moulder w.e.f. 1-1-1994 in comparison to that of Mr.Agnelo Diniz, Asstt. Moulder, is justified and proper ? If not to what relief the workman is entitled ?"

2. Upon receipt of the reference IT/41/98 came to be registered and registered AD notices were issued to both the parties. Upon appearance of the parties and more particularly Party II, at its instance Party II(a), (b) and (c) came to be added vide order of this court, dated 6-4-99.

3. In the statement of claim, it is in short the case of Party I that he was appointed as an Asstt. Moulder w.e.f. 16-5-91 in regular vacancy vide appointment order no.CME/E-2(2)/1470 dated 16-5-91 and Shri Agnelo Diniz and Shri Ulhas Potekar were promoted to the post of Asstt. Moulders w.e.f. 17-9-91 on regular basis. That prior to their promotion, they were holding the posts. of Asstt. Moulders on adhoc basis from 11-4-91 and 8-4-91 respectively. As per Recruitment Rules in force at the relevant time, the appointment on adhoc basis would not bestow on the *adhoc* promotees any claim for regular *promotion* and the service rendered by them on adhoc in the grade shall not count for the purpose of seniority in that grade and eligibility for promotion to the next higher grade. That around August 1992 Party II prepared a seniority list of mechanical workshop section employees as on 1-7-1992 wherein Party I was placed third below Shri Diniz and Shri Potekar in the category of Asstt. Moulder. The date of appointment of Shri. Diniz and Shri Potekar were shown as 17-9-91 in the seniority list and that of Party I as 16-5-91. It is stated that in view of these dates Party I being the senior most should have been placed first in the list. That Party I did not object to the said list. That in the year 1994. a vacancy arose in the post of Moulder and instead of promoting Party I to that post, Party II promoted Shri Diniz as Moulder on adhoc basis for a period of six months or till de-reservation of the post whichever is earlier. It is stated that Shri Diniz does not possess the qualification required for the said post. That by office order no.CME/E- 2(3)/94/8850 dated 29-11-94 Party II promoted Shri Diniz to the post of Moulder on adhoc basis upon which Party I made representation dated 22-1-94.to the Chief Mechanical Engineer and the Chairman of Party II, raising the dispute of seniority and Party II by its memorandum no.CME/E-2(27)/94/9838 dated 28-2-94 informed Party I that the seniority is based on the rule relating to the relative seniority between the direct recruitee and the promotee, which interpretation according to Party I was wrong proposition. It is stated that Shri Diniz was thereafter regularized on the said appointment as Moulder from 17-4-95.The representation of Party I made with the Chairman, National Commission for SC/ST, Govt. of India, New Delhi, with copy to Chairman and Dy. Chairman of Party II was not considered upon which he approached his union who raised an industrial dispute before the Asstt. Labour Commissioner (C), Vasco da Gama, Goa, who then informed Party I that the same issue was under consideration but finally by memorandum dated 13-3-96 informed Party I that the stand taken by Party II in its reply dated 28-2-94 stands. It is stated that as there was no settlement of the dispute, the matter ended in failure and hence this reference.

4. Party I has therefore prayed to hold that the action of the management of Party II in not promoting him to the post of Moulder w.e.f. 1-1-94 in comparison to that of Shri Agnelo Diniz, Asstt. Moulder is not justified and proper and further to hold that Party I is entitled to be promoted as Moulder on account of his seniority as well as educational qualifications w,e.f. 1-1-94 or thereabout with all consequential benefits applicable to the said post.

5. In the written statement Party II has denied the case setup by Party I and has stated that in terms of recruitment rules the vacancies to the post of Asstt. Moulder are to be filled in by direct recruitment or by promotion and that in case of *promotion* to the post of Asstt. Moulder the requirements of age, educational qualification etc. which is a precondition for direct recruits, do not apply in the case of promotees and the method of recruitment, whether by direct recruitment or by promotion is 50% by *promotion* failing which by a direct recruitment, 25% by absorption of trained apprentices and 25% by direct recruitment and that the preference was to be given to the apprentices trained by the port and in case of the promotion the feeder post is that of Artisan Helper. That Shri Agnel Diniz who was an Artisan Helper was promoted to the post of Asstt. Moulder and thereafter his promotion was regularized. The Party I/workman who was a schedule cast candidate was appointed as Asstt. Moulder as direct recruit against the temporary post of Asstt. Moulder. That the seniority lists were being regularly displayed on the departmental notice board and it contained clause stating that objections if any with proper justifications should reach the Chief Mechanical Engineer within 15 days of the said circular filing which it would be presumed that the seniority shown in the said list is in order and accepted by the employees concerned. It is stated that the seniority list dated 1-7-92 was accordingly published by displaying on the notice board and no objection whatsoever was raised by Party I/workman at material time. It is stated that the promotion of Shri.Agnelo Diniz on adhoc basis became effective from 14-1-94 and subsequently by order dated 12-7-94 Shri Agnelo Diniz alongwith 10 others were again promoted with a day's break from the dates of adhoc promotion, in pursuance of the recommendations of the Departmental Promotion Committee (DPC). That the representations made by Party I claiming right of promotion were duly considered by the administration which finally justified and confirmed the promotion of Shri.Agnelo Diniz to the post of Moulder to be order. Thus, Party II prayed to hold that Party I workman is not entitled to the relief claimed by him.

6. In the rejoinder Party I has denied the averments made by party II in the written statement.

7. It may be mentioned here that Party II (a), (b) and (c) did not appear before this court nor did they file the written statement.

8. In view of the case, set up by both the above parties, the issues were framed on 24-6-1999.

9. In the course of evidence, workman Shri M. Keshavarajan examined himself as witness no.1 and Shri Francisco Rodrigues, the General Secretary of Party I/ union was examined as witness no. 2. On the other hand, Party II examined their Establishment Officer in the Engineering and Mechanical Dept. as their witness no. 1 and closed the case.

10. Heard Lnd. Adv. Shri T. Pereira for Party I and Lnd. Adv. Shri A.C. Navelkar for Party II. Both the Lnd. Advocates also filed written submissions, which are on record.

11. I have gone through the records of the case, and have duly considered the submissions of both the parties. I am reproducing herewith the issues alongwith their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Party I proves that the action of the Party II / Mormugao Port Trust in not promoting him to the post of moulder w.e.f. 1.1.94 is not proper and justified ?	In the negative
2.	Whether the Party I is entitled to any relief ?	In the negative
3.	What Award ?	As per order below.

REASONS

12. **Issue No.1.** It is apparent from the pleadings in the claim statement that the grievance of Party I is that the workman ought to have been promoted from Asstt. Moulder to Moulder w.e.f. 1-1-94 on account of his seniority as well as educational qualifications. There is otherwise no dispute that workman was appointed as Asstt. Moulder vide appointment order dated 16-5-91 produced by the workman at Exb.W-1. Though the workman has not admitted in his cross examination that he was appointed to the temporary post of Asstt. Moulder vide Exb.W1, reading of this order indicates so and even otherwise in the cross examination of the workman he was shown xerox copy of the memorandum dated 15-4-91 (Exb. E-1) issued to him, selecting him for the appointment to the post of Asstt. Moulder in the Engineering (Mechanical) Department and this document also makes it clear that such offer given to the workman was against the temporary post of Asstt. Moulder. Even witness no. 2 Shri Francisco Rodriques has admitted in his cross examination that the letter of appointment at Exb. W-1 states that the workman was appointed as Temporary Asst. Moulder w.e.f. 16-5-91 though according to his such appointment was in the regular post. He has however admitted that the appointment of the workman was as per the terms and conditions mentioned in the memorandum of offer of appointment dated 15-4-91 (Exb. E-1). Thus, it becomes clear that the workman was appointed to the temporary post of Asstt. Moulder vide Exb.W-1. Exb. E-1 also indicates that the probationary period of the Asstt. Moulder was of two years and the workman has admitted that the seniority was to be counted from the date of confirmation. The workman has produced at Exb.W 2 a letter dated 23-6-95 wherein he was confirmed in the grade post of Asstt. Moulder, as on 31-12-94. Therefore, apparently, the seniority of the workman had to be counted from 31-12-94.

13. There is otherwise no dispute that at the time when the workman was appointed on the temporary post of Asstt. Moulder on 16-5-91, Shri Agnelo Diniz and Shri Ulhas Potekar was working with Party II as Asstt. Moulders on adhoc basis as their dates of appointments were 11-4-91 and 8-4-91 respectively. It is also not in dispute that prior to appointing them as Asstt. Moulders on adhoc basis, they were working as Artisan Helpers. It is also not in dispute that Shri Agnelo Diniz and Shri Ulhas Potekar were promoted as Asstt. Moulders on regular basis from 17-9-91. It is also not disputed that Party II had prepared a seniority list on 17-8-92 and the same is produced by the workman at Exb.W4 colly. It may be mentioned here that the names of Shri Agnelo Diniz, Shri Ulhas Potekar and the workman are figuring on this list at serial nos. 7, 8 and 9 and their respective dates of appointment/promotion are shown in this list as 17-9-91, 17-9-91 and 16-5-91. It is also on record that at the request of the workman to supply him the copy of the seniority list and the rules relating to relative seniority between direct recruitee and promotee, vide letter dated 27-7-94 (Exb.W3), he was provided the same by Party II vide their memorandum dated 30-8-94 (Exb.W4 colly). It is also on record that the workman did not object to the seniority list prepared by Party II and though according to the workman he did not object because he thought that at the time of promotion, Party II would consider his seniority as against Shri Agnelo Diniz and Shri Ulhas Potekar and promote him above them, as his date of appointment was shown as 16-5-91. To my mind, since admittedly the copy of rules to determine the relative seniority between direct recruitee and promotee was also supplied to the workman by Party II, it goes without saying that workman was well aware of the said recruitment rules vide which the seniority was to be determined according to the rotation of vacancies between direct recruits and promotees based on the quotas of vacancies reserved for direct recruitment and promotion respectively and therefore in such situation, it was for the workman to have objected to the seniority list if according to him, it was not correctly prepared.

14. Be that as it may, in his cross examination the workman has admitted that the seniority was to be counted from the date of confirmation and admittedly in this case

the workman was confinned as Asstt. Moulder w.e.f. 31-12-94. Though it is the contention of the learned advocate for Party I, that in terms of order dated 29-1-94 (Exb.W-5) adhoc promotion of Shri Agnelo Diniz, as Asst. Moulder could not be counted for the purpose of seniority for promotion to the next higher grade, considering the fact that the workman was confinned as Asstt. Moulder w.e.f. 31-12-94 and Shri Agnelo Diniz was appointed on regular basis as Asst. Moulder on 17-9-91, the question of considering the date of promotion of Shri Agnelo Diniz, as Asstt. Moulder on adhoc basis, is of no significance, as the same, in no way would affect the case of Party II.

15.The workman has also admitted that in the seniority list dated 17-8-92, Shri Agnelo Diniz and Shri Potekar were shown to be senior to him and according to him this list was correctly prepared. He has further admitted that he did not challenge the seniority list because it was correctly prepared. He has also admitted that the promotion of Shri Agnelo Diniz and Shri Ulhas Potekar to the post of Asstt. Moulder, was as per the decision of Departmental Promotion Committee and that the promotion to the post of Moulder from the post of Asstt. Moulder is by way of seniority which is that the senior-most Asstt. Moulder is eligible to be promoted as Moulder. He has however denied the suggestion that because Shri Agnelo Diniz was the seniormost Asstt. Moulder as per the seniority list, he was promoted as Moulder.

16.The above discussion reveals that as on 1-1-94 on which date, according to the workman he was entitled to be promoted to the post of Moulder, he was not confirmed as Asstt. Moulder and therefore the question of the workman making any grievance on this subject, does not arise.

17. In his evidence, Shri Jose Mario Pereira, the Establishment Officer in the Engineering and Mechanical Department of Party II, has stated that Party II is maintaining the seniority lists of the employees of all categories that the seniority list dated 17-8-92 (Exb.W-4 colly) was displayed on the notice board and as per this list Shri Agnelo Diniz and Shri Ulhas Potekar are shown senior to Party I. He has stated that in the said displayed list, objection if any, were called for within 15 days from the date of displaying of the said list. He has stated that the representation dated 22-1-94 (Exb. W-6) was received from the workman complaining that injustice has been caused to him while promoting Shri Agnelo Diniz to the post of Moulder but the Chief Mechanical Officer of Party II vide memo dated 28-2-94 (Exb. W-7) informed the workman that the promotion to the post of Moulder was on the basis of the seniority list dated 17-8-92 which was displayed on the notice board and that the same is based on the rules. He has also stated that for filling the posts of Asstt. Moulder, the principle of Rota-quota system was followed and that the promotion of Shri Agnelo Diniz to the post of Moulder was made after holding the DPC, the Chairman of which, was the Chief Mechanical Officer. He has stated that the DPC had recommended that Shri Agnelo Diniz was to be promoted from Asstt. Moulder to the post of Moulder. He has stated that vide office order dated 12-7-94 (Exb. E-8), Shri Agnelo Diniz was appointed to the post of Moulder, on regular basis. He has also produced the copy of the minutes of meeting held by the DPC on 29-12-93 at Exb. E-10 and has stated that item no. 8 in Exb. E-10 deals with the promotion of Shri Agnelo Diniz to the post of Moulder. He has produced the attested true copy of the Recruitment Rules for the Asstt. Moulder and Moulder at Exb. E-12. Further, he has produced the percentage watch register and more particularly the copy of page no. 23 of the same, at Exb. E-13.

18. In the cross examination of this witness the percentage watch register maintained by Party II is brought on record vide Exb. E-14 and the witness has been cross examined at length in an attempt to establish that Exb. E-14 is manipulated and fabricated by Party II. In this context, a note deserves to be taken that in the written statement vide para 15, Party II has sought leave to refer to and rely on the relevant rules governing the relative seniority of direct recruitment and promotees, which were to be determined according to rotation and quota rules as it applied to the post of Asstt. Moulders but in para 10 of the rejoinder Party I has merely denied the same by stating that they are contrary to the averments, contentions and submissions made by Party I in its claim statement. It is therefore clear from the above contention of Party I that it is/was no where the case of Party I, that Party II has fabricated and manipulated the seniority list, by showing Shri Agnelo Diniz and Shri Ulhas Potekar as senior to the workman. Thus, it is clear that the defence taken by the workman while cross examining Shri Jose Mario Pereira is apparently an afterthought defence and therefore the same cannot be considered. This is because Party I/workman has to establish his case on the basis, as averred in the claim statement/rejoinder and it is seen that no where in the averments of the Party I/workman it is their case that Party II has fabricated and manipulated the seniority list. Being so, the workman has totally failed to establish that he was senior to Shri Agnelo Diniz, for appointment as Moulder.

19.That apart, the terms of reference sent to this court are not to decide whether the seniority list is correctly prepared by DPC or not but is only to decide whether the action of Party II in not promoting the workman to the post of Moulder w.e.f. 1-1-94 in comparison to that of Shri Agnelo Diniz is justified and proper. Being so, it is not open to the workman, in this reference, to make a grievance that the seniority list was not correctly prepared and this is because if the grievance of the workman was such, he should have raised a dispute on the said subject.

20. As regards the contention of the workman that Shri Agnelo Diniz is a semi literate candidate and does not

posses any other qualification required for the said post, it is noted that in his cross examination the workman has denied that for the promotion to the post of Asstt. Moulder or Moulder, age and qualification is not necessary as is otherwise necessary for direct recruitment for the above said post. He has also denied that there are any rules of Party II for the promotion to the post of Moulder. However, Shri Francisco Rodrigues, witness no.2 for Party I has admitted in his cross examination that as per the recruitment rules the post of Asstt. Moulder, can be filled up by direct appointment as well as by promotion and that as per these rules for the post of Asstt. Moulder by promotion, qualification and age is not applicable. That apart, the Recruitment Rules which are produced on record by Shri Jose Mario Pereira at Exb.E-12 clearly indicate that age and educational qualifications prescribed for direct recruits will not apply in the case of promotees and as Shri Agnelo Diniz is admittedly a promotee, the question of applying the criteria of age and qualifications, to his case, does not arise. Thus, the contention of Party I on the above subject does not stand. Hence my findings.

Issue no. 2:

Since discussion supra makes it clear that the action of party II in not promoting the workman to the post of Moulder w.e.f. 1-1-94 is proper and justified, the Party I is not entitled to any relief. Hence my findings. In the result, and in view of above discussion, I pass the following

ORDER

1. It is hereby held that the action of the management of the Chairman / The Chief Mechanical Engineer, Mormugao Port Trust, Mormugao-Harbour, Goa-403803 in not promoting Shri M.Keshavarajan, Asstt. Moulder, EME No.46536, MPT, Baina, workshop to the post of moulder w.e.f. 1-1-1994 in comparison to that of Mr. Agnelo Diniz, Asstt. Moulder, is justified and proper.
2. Party I/workman Shri M. M. Keshavarajan, Asstt. Moulder, EME No.46536, MPT, Baina, workshop is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Place : Panaji

Dated : 16-11-2012

B. K. THALY, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डालिमा मैगनिसाइट कॉरपोरेशन, सलेम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम नयायालय, चैन्नई के पंचाट (संदर्भ संख्या 88/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-43011/36/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2012) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Dalmia Magnesite Corporation (Salem) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-43011/36/2012-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2012

Present : A.N. JANARDANAN , Presiding Officer

Industrial Dispute No. 88/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Dalmia Magnesite Corporation and their Workman)

Between

The General Secretary, ...1st Party/Petitioner Union
Magnesite Desiya
Thozhilalar Sangam
52 Dr. Subbarayan Road
Salem-636001

Vs.

The General Manager, ...2nd Party/Respondent
Dalmia Magnesite
Corporation Karupur-Post
Salem-636012

Appearance:

For the 1st Party/Petitioner Union : ...In Person

For the 2nd Party/Management : ...In Person

ORDER

The Central Government, Ministry of Labour & Employment vide its Order No. L-43011/36/2012-IR(M) dated 9-11-2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of M/s. Dalmia Magnesite Corporation, Salem regarding deduction of 8 days wages and non- payment of one day's salary without following the provisions and conducting proper enquiry is legal and justified? If not to what relief the workmen are entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 88/2012 and issued notices to both sides. Both sides entered appearance in person. It is brought home that the dispute referred to herein is the same as in ID 85/2012 in all respects and is just a recurrence of the same .

3. Now on scrutiny it is understood that the same reference is none other than the reference made to this Tribunal for adjudication as per Ministry's Order No. L-43011/36/2012-IR(M) dated 09-11-2012, already taken on file as I.D. 85/2012, due to an apparent error of duplication on the face of the record. Discernibly in all respects the same stands equivalent to the above reference. The concerned parties also made it clear before me that there is no two references made to this Tribunal at the instance of the petitioner. Now it has been comprehended that both the references are one and the same in relation to the same question and between the same parties in relation to which there is no other reference as second in the ordinal numeral.

4. The sole question will be answered in the same earlier reference i.e. I.D. 85/2012. The present being only a mere repetition of the above reference under the same date, though taken on as I.D. 88/2012 is therefore only to be struck off from the file of this Tribunal and closed with eventual consignment of the records to the preserving section and it is so ordered.

5. A copy of this order will be transmitted to the Ministry of Labour and Employment for favour of information.

A.N. JANARDANAN, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट, पोस्ट आफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 10/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-40012/119/1997-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/1998) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between The Sr. Superintendent, Post Office and their workman, which was received by the Central Government on 6-1-2013.

[No. L-40012/119/1997-IR (DU)]
SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-10/1998
दिनांक स्थापित : 1-7-1998

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/119/97-आई.आर./डीयू/दिनांक 19-6-1998 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

मुरारीलाल लक्षकार पुत्र मूलचन्द्र लक्षकार, निवासी 3 के 14 महावीर नगर, कोटा ।

...प्रार्थी श्रमिक/कर्मकार

एवं

सीनियर सुपरिन्टेन्डेन्ट, पोस्ट ऑफिस, कोटा/राजस्थान

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एन.एस. चौधरी
अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री सी.बी. सोरल
अधिनिर्णय दिनांक : 22-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 19-6-1998 के द्वारा निम्न निर्देश/विवाद,औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the Department of Post in an Industry or not, if yes, the act of the employer i.e. Sr. Superintendent, Department of Post, Kota for terminating the services of Sh. Murari Lal Lasker S/o Sh Moolchand Lasker is justified or not. If not what relief the workman is entitled to and from what date"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी कर विधिवत् अवगत करवाया गया ।

3. प्रार्थी कर्मकार ने क्लेम स्टेटमेन्ट पेश किया जिसमें यह वर्णित किया कि प्रार्थी डाक विभाग का कर्मकार है । अप्रार्थी को माननीय उच्चतम न्यायालय ने अपने निर्णय में "उद्योग" माना है । प्रार्थी को जून, 83 में अतिरिक्त विभागीय डाक वाहक (ईडीएमसी) के पद पर तलवंडी उप डाकघर में लगाया गया था । प्रार्थी ने दिसम्बर, 83 तक काम किया । फिर बाद में अलग-अलग स्थान पर 2 फरवरी, 93 तक काम किया, ऐसा उसने अपने क्लेम स्टेटमेन्ट में वर्णित किया है । प्रार्थी ने हमेशा अपना कार्य पूर्ण ईमानदारी एवं निष्ठा से किया एवं 3/2/93 को प्रार्थी अपनी नौकरी पर उपस्थित हुआ तो उसे मौखिक रूप से हटा दिया । प्रार्थी ने इस बाबत लिखित में भी निवेदन किया परन्तु कोई कार्यवाही नहीं हुई, जबकि प्रार्थी से कई कनिष्ठ व्यक्तियों को नियमित कर दिया गया । प्रार्थी जिस पद पर कार्य करता था वह नियमित प्रकृति का था । प्रार्थी द्वारा 10 वर्ष तक लगातार वहां कार्य करने से अन्य जगह पर नौकरी प्राप्त नहीं कर सका और प्रार्थी बेरोजगार हो गया । प्रार्थी ने प्रत्येक कलेण्डर वर्ष में 240 दिन से ज्यादा काम किया है, हटाने के पहले कोई नोटिस या नोटिस अवधि का वेतन व मुआवजा आदि भी नहीं दिया गया । इस प्रकार धारा 25-एफ, जी,एच अधिनियम की पालना नहीं की गयी । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से समस्त पिछले वेतन, परिलाभों व सेवा की निरन्तरता बनाये रखने के साथ पुर्नस्थापना की मांग की है ।

4. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि प्रार्थी को विभाग द्वारा कभी भी नियमित रूप से नियुक्ति नहीं दी गयी, अपितु प्रार्थी ने स्थायी अतिरिक्त विभागीय कर्मचारी को छुट्टी दिये जाने पर उसकी छुट्टी के दौरान एवजी के रूप में काम किया एवं नियमित कर्मचारी के आने पर प्रार्थी को स्वयं हटना पड़ा । प्रार्थी विभाग का कर्मचारी नहीं है। प्रार्थी ने वर्ष 84-85 एवं 86 में भी कुछ अल्पावधि के लिए जिसका उल्लेख जवाब के पैरा सं. 4 में दिया गया है, एवजी के रूप में काम किया है, नियमित कर्मचारी लम्बी अवधि तक अनुपस्थित भी नहीं रहा, अतः ऐसे में प्रार्थी जो एवजी के रूप में लम्बी अवधि तक डयूटी करने का तथ्य बता रहा है, वह सही नहीं है। प्रार्थी ने कभी भी किसी रिक्त पद के लिए निर्धारित शर्तों के साथ आवेदन पेश नहीं किया । विभाग में ईडीएमसी के जो पद हैं, वह कर्मचारी यदि छुट्टी में जाता है तो उसकी जगह अन्य एवजी को लगाकर जाना पड़ता है। अतः प्रार्थी ने भी उसी अनुरूप एवजी के रूप में काम किया होगा, अतः प्रार्थी विभाग का कर्मचारी ही नहीं है, ऐसे में विभाग द्वारा धारा 25-एफ,जी,एच अधिनियम के उल्लंघन का प्रश्न ही पैदा नहीं होता । अतः अप्रार्थी ने अपने जवाब के माध्यम से प्रार्थी का क्लेम स्टेटमेन्ट खारिज किये जाने की प्रार्थना की ।

5. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी मुरारीलाल का शपथ-पत्र पेश हुआ, अप्रार्थी द्वारा उससे जिरह की गयी। अप्रार्थी की साक्ष्य में गजानन्द मीणा का शपथ-पत्र पेश हुआ । प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में प्रार्थी की ओर से प्रदर्श डब्ल्यू 1 लगा. डब्ल्यू.11 तक के कागजात व अप्रार्थी द्वारा प्रदर्श एम.1 लगा. एम.4 तक के कागजात प्रदर्शित करवाये गये ।

6. मामले में उभयपक्ष की साक्ष्य समाप्त होने के पश्चात दिनांक 27-1-2006 के बाद से ही यह प्रकरण बहस अन्तिम हेतु नियत किया जाता रहा है। इस प्रकार करीबन साढ़े छः वर्ष से भी ज्यादा अवधि पक्षकारों को बहस अन्तिम हेतु प्राप्त हो चुकी है। गत सुनवाई तिथि पर प्रार्थी के प्रतिनिधि ने एक प्रार्थना-पत्र पेश कर निवेदन किया कि उनके द्वारा श्रम मंत्रालय, नई दिल्ली को रेफ्रेन्स में सेवामुक्ति तिथि का अंकन नहीं होने से संशोधन कार्यवाही हेतु लिखा हुआ है, अतः अवसर दिया जावे। प्रार्थी के प्रतिनिधि की प्रार्थना स्वीकार की जाकर सुनवाई तिथि लम्बी दी गयी एवं आज के लिए सुनवाई तिथि नियत की गयी । आज भी प्रार्थी के प्रतिनिधि ने पुनः पिछला कारण दोहराते हुए ही प्रार्थना-पत्र पेश किया व अवसर चाहा ।

7. जब प्रकरण गत साढ़े छः वर्ष से बहस अन्तिम हेतु नियत किया जा रहा है, भारत सरकार से वर्ष 98 में रेफ्रेन्स हुआ है, इस प्रकार रेफ्रेन्स हुए भी करीबन 14 वर्ष की अवधि हो चुकी है एवं बहस हेतु साढ़े छः वर्ष की अवधि व्यतीत हो चुकी है, अतः यदि प्रार्थी चाहता तो इतनी अवधि में आसानी से रेफ्रेन्स में सेवा से हटाने की तिथि का अंकन करवाकर शुद्धि-पत्र पेश कर सकता था, परन्तु उसके द्वारा ऐसा नहीं किया गया । अतः बार-बार इसी चकारण से स्थगन दिया जाना भी उचित नहीं कहा जा सकता एवं कालान्तर में यदि सेवा से हटाने तिथि बाबत संशोधन-पत्र जाता है तो उस तिथि को मानकर उसी अनुरूप मामले का गुणावगुण के आधार पर विनिश्चय भी किया जा सकता है । अतः प्रार्थी के प्रतिनिधि की प्रार्थना और स्थगन दिये जाने की अस्वीकार की गयी ।

8. उभयपक्ष की बहस अन्तिम सुने जाने के प्रक्रम पर प्रारम्भ में ही यह प्रकट किया गया कि रेफ्रेन्स में प्रार्थी को सेवा से कब हटाया गया, इस तिथि का कोई उल्लेख नहीं है। अतः कौन सी तिथि को सेवा समाप्ति तिथि मानकर सेवा से हटाने की कार्यवाही की उचितता एवं वैधता का विनिश्चय किया जावे । इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा "महावीर कण्डक्टर बनाम नन्दकिशोर-2003 डब्ल्यू. एल.सी. (राज.) यू.सी. पृष्ठ 424" में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफ्रेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश/रेफ्रेन्स की शर्तों में सुधार, संशोधन या उपान्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है । अतः माननीय उच्च न्यायालय द्वारा निर्देश/रेफ्रेन्स में कर्मकार को सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया ।

9. इस उक्त न्यायनिर्णयन में प्रतिपादित सिद्धांत के अनुसार जहां निर्देश में सेवा से हटाने या मुक्त करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है । अर्थात अन्य शब्दों में यदि निर्देश में सेवा से मुक्त/पृथक या हटाने की तिथि का कोई अंकन नहीं है एवं दोनों ही पक्षकार यदि ऐसी तिथि बता भी देते हैं तो भी श्रम न्यायालय को बतायी गयी तिथि को मानकर उसके आधार पर निर्देश/रेफ्रेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है । इस न्यायनिर्णय के पैरा सं. 11 में माननीय उच्चतम न्यायालय द्वारा मदनपालसिंह बनाम उत्तर

प्रदेश राज्य व अन्य-एआईआर 2000 एस.सी. 537 के निर्णय को विवेचित किया गया तथा अन्त में यह निष्कर्ष निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से परे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता । यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय ऐसा संशोधन करने की अधिकारिता नहीं रखता। अत: इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय ने हस्तगत मामले में श्रम न्यायालय द्वारा पारित अधिनिर्णय को क्षेत्राधिकार के अभाव को मानते हुए अपास्त कर दिया ।

10. उपरोक्त न्यायनिर्णय में प्रतिपादित सिद्धांत को इस हस्तगत प्रकरण के तथ्यों पर घटित करके देखा जाय जो इस मामले में भी निर्देश/रेफ्रेन्स जो सक्षम सरकार द्वारा किया गया है, उसमें प्रार्थी श्रमिक मुरारीलाल लक्षकार को अप्रार्थी द्वारा सेवा से कब पृथक किया गया, ऐसी कोई तिथि का उल्लेख नहीं है। अत: हस्तगत मामले में भले ही पक्षकारों ने अपने क्लेम स्टेटमेन्ट व उसके जवाब में या साक्ष्य में प्रस्तुत शपथ-पत्रों में सेवा से निष्कासन की तिथि का उल्लेख किया हो, परन्तु माननीय उच्चतम एवं उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांत अनुसार इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनिर्णय पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा। इस न्यायनिर्णय के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायालय को निर्देश अधिनिर्णित करने का अधिकार प्राप्त हो । अत: कुल मिलाकर स्थिति उक्त न्यायनिर्णयों के ही अभी तक प्रभावशील होने की पायी जाती है । माननीय उच्च न्यायालय द्वारा पारित निर्णय व उसमें प्रतिपादित सिद्धांत से यह न्यायाधिकरण आबद्ध है। अत: ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफ्रेन्स में प्रार्थीगण श्रमिक की सेवामुक्ति तिथि का कोई अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश में कोई अधिनिर्णय पारित करने की अधिकारिता प्राप्त नहीं रखता है। एवं यदि पक्षकार चाहे तो सक्षम सरकार से इस बाबत निर्देश में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में गुणावगुण के आधार पर विधि अनुसार अग्रिम कार्यवाही कर सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपनी उक्त प्रासंगिक अधिसूचना सं. एल. 40012/119/97/आई. आर. (डीयू) दिनांक 19-6-98 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि माननीय राज. उच्च न्यायालय द्वारा "महावीर कण्डक्टर बनाम नन्दकिशोर-2003 डब्ल्यू.एल.सी. (राज.) यू.सी. पृष्ठ 424" के न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफ्रेन्स में प्रार्थी श्रमिक मुरारीलाल लक्षकार के सेवा से निष्कासन/पृथक की तिथि का कोई अंकन/उल्लेख नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने का अधिकार नहीं होने से निर्देश में अधिनिर्णय पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा । पक्षकार यदि चाहे तो सक्षम सरकार से इस सेवामुक्ति तिथि बाबत संशोधन कराकर न्यायाधिकरण में पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे निस्तारण की कार्यवाही कर सकेगा ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर, सेन्सस ऑपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 18/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/170/2000-आईआर (डीयू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 18/2001) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Oprations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/170/2000-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-18/2001

दिनांक स्थापित : 3-8-2001

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/170/2000-आई आर/डीयू/दिनांक 28-9-2000 एवं अग्रेषित पत्र दि. 31/7/2001 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

हरिराम पुत्र सूरजमल यादव, निवासी ग्राम टहला पोस्ट सुवाना तहसील दीगाद जिला कोटा ।

...प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूंगरी, जयपुर।

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल. सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री सी.बी. सोरल

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासांगिक आदेश दि. 28-9-2000 एवं अग्रेषित पत्र दिनांक 31/7/2001 के द्वारा निम्न निर्देश/विवाद,औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the termination of services of Sh. Hari Ram S/o Sh. Surajmal Yadav by the management of Census Department, Jaipur w.e.f. 30-6-92 is legal and justified? If not, to what relief the disputant is entitled and from which date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ. न्या./केन्द्रीय/-18/2001 का निस्तारण किया जा रहा है। हालांकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालांकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है।

4. इस प्रकरण में प्रार्थी ने अपने आपको दैनिक वेतन भोगी श्रमिक बताया है एवं उसने अपनी नियुक्ति तिथि 24-4-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 24-4-1991 से दैनिक वेतन भोगी श्रमिक के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के आकस्मिक श्रमिक के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुन: एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके दैनिक वेतन भोगी श्रमिक/आकस्मिक श्रमिक पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि

के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृति किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थी का यह कथन *असत्य* है कि *इसकी नियुक्ति मौखिक* रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति आकस्मिक श्रमिक के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी का अनुबन्ध में वर्णित समेकित वेतन रु. 750 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि दैनिक वेतन भोगी श्रमिक के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को *खारिज* किये जाने की *प्रार्थना* की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक हरिराम का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य *निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय* से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीय कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों का संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको *नियुक्त किया जायेगा* व किस प्रकार से पर्यवेक्षण *किया जायेगा*, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में दैनिक वेतन भोगी/आकस्मिक *श्रमिक* (केजुअल लेबर) के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अत: ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अत: जहाँ पर भी अप्रार्थी ने हस्ताक्षर *करवाये*, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अत: इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मचारी की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड I *पानीपत/हरियाणा*—2010(2)आर.एल.डब्ल्यू 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संघठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284—इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य—2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730—इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थीं । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेगें एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्दृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा से नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171- इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट— 2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)- इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया। अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अर्न्तवस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारतवर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायलय, कोजीकोड" का उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट ऑफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य—(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार हैं :—

"Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law."

"Phenomenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted—Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled

to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules--It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:—

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार हैं :—

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length---since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अतः उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, बारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149"

के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment—Under the National Leprosy Eradication Programme launched by Central Government—Non-extention of scheme—work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department—Approach to State Government—Absorption refused—Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धान्तों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्राथी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश क्रमांक एल-42012/170/2000-आईआर (डीयू)/ दिनांक 28-9-2000 एवं अग्रेषित पत्र दिन. 31-7-2001 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी हरिराम की जो सेवायें समाप्त की गयी हैं, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी हरिराम किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर, सेन्सस ऑपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोटा के पंचाट (संदर्भ संख्या 21/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/169/2000-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2001) of Industrial Tribunal Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/169/2000-IR (DU)]
SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-21/2001
दिनांक स्थापित : 9-8-2001

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/169/2000-आई.आर./डीयू/दिनांक 28-9-2000 एवं अग्रेषित पत्र दि. 6-8-2001 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

अनवर अहमद पुत्र मोहम्मद शकूर, निवासी हिरण बाजार, इमली का चौक वार्ड नं. 31 चन्द्रघटा, कोटा।

—प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल. सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री सी.बी. सोरल

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासांगिक आदेश दि. 28-9-2000 एवं अग्रेषित पत्र दिनांक 6-8-2001 के द्वारा निम्न निर्देश/विवाद,औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the termination of Sh. Anwar Ahmed S/o Sh. Mohammed Shakoor Musalman by the management of Census Department, Jaipur w.e.f. 30-6-92 is legal and justified? If not, to what relief the dispuntant is entitled and from which date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ. न्या./केन्द्रीय/-21/2001 का निस्तारण किया जा रहा है। हालांकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालांकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है।

4. इस प्रकरण में प्रार्थी ने अपने आपको दैनिक वेतन भोगी श्रमिक बताया है एवं उसने अपनी नियुक्ति तिथि 24-4-1991 एवं हटाने की तिथि 30-6-92 बतायी है। प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है। विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे। अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 24-4-1991 से दैनिक वेतन भोगी श्रमिक के पद पर सेवा में नियोजित किया गया। नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया। बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है। यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं। इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के आकस्मिक श्रमिक के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी। प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी। इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी। प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी। प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना

विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुन: एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके दैनिक वेतन भोगी श्रमिक/आकस्मिक श्रमिक पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृति किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति आकस्मिक श्रमिक के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 750 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि दैनिक वेतन भोगी श्रमिक के पद तो 30-6-92 तक ही उपलब्ध थे । चूंकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या/केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात् साक्ष्य प्रार्थी में प्रार्थी श्रमिक अनवर अहमद का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों का संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूंकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात् बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में दैनिक वेतन भोगी/आकस्मिक श्रमिक (केजुअल लेबर) के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अत: ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अत: जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से

ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मचारी की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड I पानीपत/हरियाणा—2010(2)आर.एल.डब्ल्यू. 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संघठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284—इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य—2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730—इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थीया की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थीया स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थीया का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं : -

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171—इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट—2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित् अवधि के लिए हुई है तो 240 दिन से ज्यादा काम पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "*सावित्री विजय*" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहां कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारतवर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स प्रा. लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" का उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित् अवधि समाप्त होने के फलस्वरूप यदि

सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे म

धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट ऑफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य—(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :—

"Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law."

"Phenomenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted—Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:—

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है:—

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain–not at arm's length–since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of

legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्‌धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह., राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely sovereign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment—Under the National Leprosy Eradication Programme launched by Central Government—Non-extention of scheme—work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department— Approach to State Government—Absorption refused— Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धांतों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्राथी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्‌धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती है तो उसे 'छंटनी' की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्राथी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । तब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्राथी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्राथी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्राथी व अन्य प्रार्थीगण में से कोई यदि भर्ती की नियमित प्रक्रिया से गुजरे तो वे उस भर्ती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु-सीमा से भी काफी ऊपर की आयु सीमा तक पहुंच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्राथी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/169/2000-आईआर (डीयू) दिनांक 28-9-2000 एवं अग्रेषित पत्र दिना. 6/8/2001 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी अनवर अहमद की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी अनवर अहमद किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डॉयरेक्टर, सेन्सस ऑप्रेशनस, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ सं. 17/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/81/1998-आई आर (डी.यू.)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 06-01-2013.

[No. L-42012/81/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-17/2002

दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/81/98-आई.आर./डीयू/दिनांक 10-4-2002 एवं शुद्धिपत्र दिनांक 9-7-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

देवीलाल पुत्र नाथूलाल कोली, द्वारा मोहनलाल जी, सीनियर टीचर ग्राम एवं पोस्ट ओफिस दीगोद जिला कोटा ।

...प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूंगरी, जयपुर ।

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 10-4-2002 एवं सपठित शुद्धिपत्र दिनांक 9-7-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

"Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discountinuing the services of Sh. Devi Lal S/o Shri Nathu Lal Koli C/o Sh. Mohan Lalji, Sr. Teacher, Village & Post Office Digod, Distt. Kota-324006 w.e.f. 30-6-92 is legal and justified? If not, to what relief the workman is entitled and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/-17/2002 का निस्तारण किया जा रहा है । हालांकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालांकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने नियुक्ति तिथि 24-6-91 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहां यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों मे दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूंकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 24-6-91 से कम्पलायर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक, जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें

जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के कम्पालाईर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयीं । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिट याचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहां कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहां वार्ता असफल हुई । फिर प्रार्थी ने पुन: एक रिट याचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलाईर/चेकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इस पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति कम्पलाईर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूंकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात् साक्ष्य प्रार्थी में प्रार्थी श्रमिक देवीलाल का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी. शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालांकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूंकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात् बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही

अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है। आगे इसी अधिनियम में कम्पलाईर के पद का उल्लेख हुआ है। उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है। जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है। इस मामले में अनुबन्ध में जहां एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं। प्रार्थी को तो रोजगार चाहिए था, अतः जहां पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहां उसने हस्ताक्षर कर दिये। प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी/राज./पृष्ठ 340-इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड I पानीपत/हरियाणा-2010(2)आर.एल.डब्ल्यू. 1586(एस.सी.)-इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहां नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284-इस मामले में प्रतिपादित किया गया कि जहां संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य-2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730-इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है। अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है। प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है। प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है। इसके अलावा जनगणना का कार्य भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं। प्रार्थी को भी संविदा के आधार पर रखा गया था। औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहां किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता। अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी। इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पाएंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया। अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता। इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहां पर कोई औद्योगिक एवं व्यवसायिक गतिविधियां संचालित नहीं होती हैं, यह राज्य का एक सार्वभौमिक कर्तव्य है। प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे। पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं। उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :-

"(1) 1996 लेब.आई.सी. पृष्ठ 915 (एस.सी.)-सुल्तान सिंह बनाम हरियाणा राज्य-इस मामले में जहां राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने के इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एंव अन्य-2000 लेब.आई.सी. 649 (केरला उ. न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहां संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य-आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171-इस *न्यायनिर्णय* में प्रतिपादित किया गया कि जहां कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा-2001 (3)राज. पृष्ठ 1465-इस मामले में भी जहां अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट-2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)- इस मामले में प्रतिपादित किया गया कि जहां किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका-2003 (97) एफ.एल.आर. 608-इस मामले में प्रतिपादित किया गया कि जहां किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती-2000 लेब. आई.सी. 3745 (कर्नाटक उ. न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहां अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पलाईर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में *न्यायाधिकरण* का इतना ही कहना पर्याप्त है कि जहां एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रप्राप्त व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती हैं एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहां कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में

किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स (प्रा.) लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" को उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा अधिशासी अभियन्ता,भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है। हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई हैं तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य-(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :-

"Service Law–Casual Labour/Temporary Employee-Status and rights of–Unequal bargaining power– Effect– Held, such employees do not have any right to regular or permanent public employment– Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail– Labour Law."

"Phenomenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, hiqhlighted– Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appoinmtnet by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules– It is further not open to the court to prevent regular recruitment at the instance of such employees– Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है :-

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पेरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है :-

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain– not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them, After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and

the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहां कर्मकार की अनुबंध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबंध का नवीनीकरण नहीं करने पर एवं अनुबंध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह भी वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह, राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire natation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment- Under the National Leprosy Eradication Programme launched by Central Government Non-extention of scheme- work refused- Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department Approach to State Government - Absorption refused- Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible- No interference warranted- Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धांतों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारतवर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भर्ती की नियमित प्रक्रिया से गुजरे तो वे उस भर्ती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/81/98-आई.आर(डीयू) दिनांक 10-4-2002 एवं सपठित शुद्धिपत्र दिनांक 9-7-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी देवीलाल की जो सेवायें की गयी हैं, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था। अतः प्रार्थी देवीलाल किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डॉयरेक्टर, सेन्सस ऑप्रेशनस, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ सं. 25/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2013 को प्राप्त हुआ था।

[सं. एल-42012/79/1998-आई आर (डी यू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the Director, Census Oprations, Jaipur and their workman, which was received by the Central Government on 06-01-2013.

[No. L-42012/79/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/25/2002

दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/79/98-आई.आर.(डीयू) दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

शम्भूलाल पुत्र बिरधीलाल तेली, द्वारा ओ.पी. खण्डेलवाल, 1-सी-18, राज. हाउसिंग बोर्ड कालोनी, तलवण्डी, कोटा

...प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है: -

"Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discountinuing the services of Sh. Shamboo Lal S/o Shri Birdhi Lal Teli w.e.f. 30-6-92 is legal and justified? If not, to what relief the workman is entitled and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत अवगत करवाया गया।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/25/2002 का निस्तारण किया जा रहा है। हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्रायः समान रूप से आयी हैं एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की हैं, अतः सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्रायः समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने अपनी नियुक्ति तिथि 15-7-91 एवं हटाने की तिथि 30-6-92 बतायी है। प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है। विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्रायः सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजी एक जैसी ही है, अतः किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे। अतः इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 15-7-91 से कम्पायलर के पद पर सेवा

में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक, जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा जारी की जाती है जिसमें प्रार्थी श्रमिक के कम्पलायर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफजीएच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलायर/चैकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पदों हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति कम्पलायर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलायर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक शम्भूलाल का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों का संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थी । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने

या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है। आगे इसी अधिनियम में कम्पलायर के पद का उल्लेख हुआ है। उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है। जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है। इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं। प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये। प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी. /राज./पृष्ठ 340-इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड। पानीपत/हरियाणा-2010(2)आर.एल.डब्ल्यू. 1586(एस.सी.)-इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284-इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भर्ती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य-2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730-इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है यह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है। अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है। प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है। प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है। इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों को जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं। प्रार्थी को भी संविदा के आधार पर रखा गया था। औ.वि.अधिनियम की धारा 2(ओओ)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनवीनीकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता। अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी। इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का ही दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया। अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता। इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है। प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थी का क्लेम सादर खारिज किया जावे। पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं। उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :-

"(1) 1996 लेब.आई.सी. पृष्ठ 915 (एस.सी.)-सुल्तान सिंह बनाम हरियाणा राज्य-इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने के इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एंव अन्य-2000 लेब.आई.सी. 649 (केरला उ. न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहां संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य-आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171-इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा-2001 (3)राज. पृष्ठ 1465-इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट-2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)- इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटिका-2003 (97) एफ.एल.आर. 608-इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती-2000 लेब. आई.सी. 3745 (कर्नाटक उ.न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भर्ती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पालायर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया तथा मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महायंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड'

का उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा, अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहां कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधि नियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई हैं तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य-(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :-

"Service Law– Casual Labour/Temporary Employee– Status and rights of– Unequal bargaining power– Effect– Held, such employees do not have any right to regular or permanent public employment– Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it– Reasons for, discussed in detail– Labour Law."

"Phenomenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted– Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules– It is further not open to the court to prevent regular recruitment at the instance of such employees– Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है :-

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है :-

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length– since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for

selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहां कर्मकार की अनुबंध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबंध का नवीनीकरण नहीं करने पर एवं अनुबंध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह भी वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहां संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely sovereign functions and welfare of the entire natation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment– Under the National Leprosy Eradication Programme launched by Central Government Non-extention of scheme– work refused– Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department Approach to State Government– Absorption refused Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible– No interference warranted– Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती है तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भर्ती की नियमित प्रक्रिया से गुजरे तो वे उस भर्ती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुंच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश क्रमांक एल-42012/79/98-आई.आर(डीयू) दिनांक 30-2-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी शम्भूलाल की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी हैं एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी शम्भूलाल किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर, सेन्सस ऑपरेशन जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोटा के पंचाट (आईडी संख्या 19/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/77/1998-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 19/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the the Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/77/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/19/2002
दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/77/98-आई.आर.(डीयू) दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

नन्दकिशोर पुत्र मूलचन्द्र गूजर 1221 वार्ड नं. 33 किशोरपुरा, कोटा

— प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासंगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद,औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

> "Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discontinuing the services of Sh. Nand Kishore S/o Sh. Mool Chand Gurjar w.e.f. 30-6-1992 is legal and justified? If not, to what relief the workman is entitled and from what date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ. न्या./केन्द्रीय/19/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्रायः समान रूप से आयी हैं एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अतः सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्रायः समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने अपनी नियुक्ति तिथि 3-6-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्रायः सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूंकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अतः किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अतः इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 3-6-1991 से कम्पायलर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना,

कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक, जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के कम्पलायर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखित रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्य दिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलायर/चेकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति कम्पलायर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी थी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था व उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक नन्दकिशोर का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको

नियुक्त किया जायेगा वे किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पलाईर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मचारी की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड । पानीपत/हरियाणा—2010(2)आर.एल.डब्ल्यू. 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संघठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284—इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भर्ती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य—2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730—इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखित रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(00)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण

खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोझीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171—इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट—2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भर्ती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्राथी/प्रार्थीय को कम्पलायर/चेकर आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अतः ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अतः अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अतः प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये

जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयीं तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अतः इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायलय, कोजीकोड" का उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा, अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है। हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य—(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :—

> "Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law."
>
> "Phenomenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted—Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:—

> "Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है:—

> "While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for sometime and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length --since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was

accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायलय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ. न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला. उ. न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment—Under the National Leprosy Eradication Programme launched by Central Government—Non-extention of scheme—work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department—Approach to State Government—Absorption refused—Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य"

के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है। प्राथी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है। अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं। तब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है। इसके अलावा प्राथी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है। प्राथी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है। यह प्राथी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुंच चुके थे। अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्राथी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/77/98-आईआर (डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी नन्दकिशोर की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैध था। अत: प्रार्थी ओमप्रकाश किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर, सेन्सस ऑपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (आईडी संख्या 22/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था।

[सं. एल-42012/68/1998-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/68/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-22/2002
दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/68/98-आई.आर./डीयू/दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

श्रीमती लक्ष्मी पत्नी श्री चन्दरवीर पाठक, कोटा।

—प्रार्थीया श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल. सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री सी.बी. सोरल

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discontinuing the services of Smt. Laxmi W/o Shri Chandervir Pathak w.e.f. 30-6-1992 is legal and justified? If not, to what relief the workman is entitled and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ. न्या./केन्द्रीय/-18/2001 का निस्तारण किया जा रहा है । हालांकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालांकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थीया ने अपने आपको कम्पायलर बताया है एवं उसने नियुक्ति तिथि 8-4-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्धान प्रतिनिधिगण ने यह अभिकथन किया कि चूंकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थीया ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 24-4-1991 से कम्पायलर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक, जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थीया श्रमिक के कम्पायलर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थीया श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थीया के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थीया को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थीया कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थीया की सेवा समाप्ति छंटनी की तारीफ में होता है एवं सेवा समाप्ति से पहले प्रार्थीया की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्य दिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थीया की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थीया द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिट याचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थीया को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थीया ने पुन: एक रिट याचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पायलर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थीया का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति कम्पायलर के पद पर की गयी थी । प्रार्थीया का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी थी। सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थीया

को सेवा से पृथक कर दिया गया था । प्रार्थीया का अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पायलर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थीया अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले में दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थीया के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थीया में प्रार्थीया श्रमिक श्रीमती लक्ष्मी का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थीया द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीय कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूंकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात् बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थीया की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थीया ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पायलर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थीया ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अत: ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थीया को तो रोजगार चाहिए था, अत: जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थीया का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थीया ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अत: इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थीया का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340 इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड । पानीपत/हरियाणा 2010(2)आर.एल.डब्ल्यू. 1586(एस.सी.) इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम 2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य (2003)10 एस.सी.सी.284 इस मामले में प्रतिपादित किया गया कि जहाँ सांविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भर्ती तक उसकी सेवायें रखी जानी चाहिए थीं, अत: इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य 2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730 इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में *नियुक्ति* तथा *समाप्ति* दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थीया की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह *लिखित अनुबन्ध स्वयं प्रार्थीया* के द्वारा हस्ताक्षरित है एवं ऐसे *अनुबन्ध* पर प्रार्थीया ने अपने हस्ताक्षर होना भी स्वीकार किया है । अत: अब प्रार्थीया उस अनुबन्ध से परे जाकर यदि कोई कथन करती है तो वह कोई महत्व नहीं रखता है । *प्रार्थीया* ने *अनुबन्ध* के तथ्यों को ही छिपा दिया है । प्रार्थीया ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार *कराया* जाता है एवं उसमें *महापंजीयक*, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, *वही स्वीकृति* जारी होती है एवं उस *स्वीकृति* के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थीया को भी संविदा के आधार पर रखा गया था । औ.वि. *अधिनियम* की धारा 2(00)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अत: इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वत: समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था । वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अत: जब प्रार्थीया का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थीया स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अत: प्रार्थीया का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो *माननीय उच्चतम न्यायालय* द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171—इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट—2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धातों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब

हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक/श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया तथा मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रप्राप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" का उद्‌धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्‌धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य—(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :—

> "Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law."
>
> "Phenonmenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted—Held, merely because an employee had continued under cover of an order of the court, under 'litigious

employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:—

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार हैं:—

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) रांज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो

जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्दृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती हैं ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:

> "The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely sovereign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

> "Appointment --Under the National Leprosy Eradication Programme launched by Central Government Non-extention of scheme ---work refused---Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department - Approach to State Government--- Absorption refused---- Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible No interference warranted Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्दृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारतवर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुंच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30.6.92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/68/98 आईआर (डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थीया श्रीमती लक्ष्मी की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थीया श्रीमती लक्ष्मी किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर सेन्सस ऑपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 27/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/107/1998-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/107/1998-IR (DU)]
SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-27/2002
दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/107/98-आईआर/डीयू/दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

दयाराम पुत्र गणपतलाल छीपा, म.नं. 3-एल 20, विज्ञाननगर, कोटा ।

—प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर ।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

> "Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discontinuing the servies of Sh. Daya Ram S/o Sh. Ganpat Lal Chipa w.e.f. 30-6-1992 is legal and justified? If not, to what relief the workman is entitled and from what date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/-27/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने अपनी नियुक्ति तिथि 2-7-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजी एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 2-7-1991 से कम्पायलर के पद पर सेवा

में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक जनगणना, राजस्थान, जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के कम्पायलर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखित रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलाईर/चेकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ को समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृति किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून; 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी की नियुक्ति कम्पलाईर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले में दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात् साक्ष्य प्रार्थी में प्रार्थी श्रमिक दयाराम का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों का संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात् बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । *जनगणना* अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में *जनगणना* कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पलाईर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अत: ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अत: जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अत: इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस *न्यायनिर्णय* में *जनगणना* विभाग में नियुक्त कर्मचारी की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम *अधिशासी अभियन्ता*, पी.एच.डी. खण्ड I पानीपत/हरियाणा—2010(2)आर.एल.डब्ल्यू. 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284—इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अत: इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य—2008 डब्ल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 730—इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है यह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अत: अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा *जनगणना* का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अत: इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वत: समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय *सारणीयन कार्यालय* जून, 92 तक ही काम कर पायेंगे एवं इसी

अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अत: जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती हैं, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अत: प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171—इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट—2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रप्राप्त व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती

है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहां कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोइ मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" का उदृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है। हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य—(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार हैं :—

"Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law."

"Phenonmenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted—Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार हैं:—

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार हैं:—

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be

directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डबल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायलय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्दृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment--Under the National Leprosy Eradication Programme launched by Central Government— Non-extention of scheme—work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department Approach to State

Government— Absorption refused— Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । तब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारतवर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश क्रमांक एल-42012/107/98-आईआर (डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी दयाराम की जो सेवायें की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी दयाराम किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर सेन्सस ऑपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (आईडी संख्या 26/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/109/1998-आईआर (डीयू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/109/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-26/2002
दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/109/98-आईआर/डीयू/दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

दानमल मीणा पुत्र धन्नालाल मीणा, राजकीय प्राईमरी स्कूल के पास शिवपुरा, कोटा ।

...प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर ।

...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

> "Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discontinuing the services of Sh. Dan Mal Meena S/o Sh. Dhana Lal Meena w.e.f. 30-6-1992 is legal and justified? If not, to what relief the workman is entitled and from what date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/-26/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने नियुक्ति तिथि 25-7-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजी एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 25-7-1991 से कम्पायलर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा की जाती है जिसमें प्रार्थी श्रमिक के कम्पायलर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्य दिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिट याचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुन: एक रिट याचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पायलर/चेकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत

किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी की नियुक्ति कम्पायलर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी का अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पायलर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले में दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक दानमल का शपथ पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पायलर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अत: ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अत: जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अत: इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड-1 पानीपत/हरियाणा—2010(2)आर.एल.डब्ल्यू. 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी. 284 इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है

तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भर्ती तक उसकी सेवायें रखी जानी चाहिए थीं, अत: इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य—2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730—इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अत: अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अत: इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वत: समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेगें एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अत: जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती हैं, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अत: प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171- इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा- -2001(3) राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट -2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका- 2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती- 2000 लेब. आई.सी. 3745 (कर्नाटक उ.न्या.) -इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णन "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायलय, कोजीकोड" का उद्धृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है। हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई हैं तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट ऑफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य (2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :

> "Service Law—Casual Labour/Temporary Employee—Status and rights of Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it Reasons for, discussed in detail—Labour Law."

"Phenonmenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, hiqhlighted- -Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:-

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार हैं: -

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his " employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a aperson cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायलय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह., राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

> "The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

> "Appointmen—Under the National Leprosy Eradication Programme launched by Central Government— Non-extention of scheme—work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department— Approach to State Government— Absorption refused— Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती है तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । तब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भर्ती की नियमित प्रक्रिया से गुजरे तो वे उस भर्ती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/109/2002-आईआर (डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी दानमल की जो सेवायें की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी दानमल किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 15 जनवरी, 2013

का.आ. 355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वोत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 42/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-2013 को प्राप्त हुआ था ।

[सं. एल-41011/20/2008-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 42/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Purvottar Railway and their workmen, which was received by the Central Government on 15-01-2013.

[No. L-41011/20/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT: Dr. MANJU NIGAM, Presiding Officer

I.D. No 42/2008

L-41011/20/2008-IR(B-I) dated 10-07-2008

BETWEEN:

Mandal Sanghathan Mantri,
Purvottar Railway Shramik Sangh,
283/63 KH (i.e., B) Ghari Kanora,
Premwati Nagar,
Lucknow

AND

The Varisth D.P.O.,
Purvottar Railway,
Ashok Marg,
Lcuknow

AWARD

1. By order No. L-41011/20/2008-IR (B-1) dated 10-07-2008, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Mandal Sanghathan Mantri, Purvottar Railway Shramik Sangh, 283/63KH (i.e.B) Ghari Kanora, Premwati Nagar, Lucknow and the Varisth D.P.O., Purvottar Railway, Ashok Marg, Lucknow for adjudication.

2. The reference under adjudication is :

"Whether the Action of The Management of Purvottar Railway in Stopping Increment for one year vide their punishment order dated 23-03-2004 to Sri Sheshnath Ken, Driver Grade III, is fair, legal and justified? If not, what relief the workman concerned is entitled to?"

3. The case of the workman is that workman Sri Sheshnath Ken is working as Crane Driver Gr.III at Mailani. The management issued a charge sheet in Form No. 5 no. M/C.D.O./D.A.R/LJN/1/22 dated 11-10-2001 for the charge that workman refused to go Gonda without Steam Man nn 26.09.2001. The workman stated that he demanded the papers on 01-11-2001 but management not produced any paper regarding denial of the orders of the authorities it is against the Railway Servant (Discipline & Appeal 1968. On 11-10-2001 Sri S.K. Gautam was appointed as Enquiry Officer, The workman has alleged that enquiry officer conducted the enquiry in arbitrary manner, even without complying the principle of natural justice. It was further submitted that he made representation on 02-12-2002 but management did not consider his representation. On 23-03-2004 Disciplinary Authority passed the order if Stoppage of one increment for one year as per Discipline & Appeal Rule 1968 sub Rule 10(2). Further alleged that appeal of 13-05-2004 filed by him was also not considered. Accordingly, the workman has prayed that order no. M/C.D.O./D.A.R/LJN/1/40 dated 23-03-2004 quashed and allowed the stoppage of one increment for one year to workman from back date.

4. The opposite party filed its written statement, denying the claim of the workman; wherein it has been submitted that the workman had denied the orders of the authorities that not to go to Mailani without Steam man. The management stated that workman already admitted in DAR enquiry on 11-05-2002 that he denied the orders of the authorities it is against the Rules and disciplinary enquiry was conducted against the workman and he was found guilty. The management denied that he was not given the documents as demanded by the workman. The workman issued major penalty charge sheet no. M/CDO/DAR/Lin/I dated 11-10-2001 SF-II but CDO change the charge sheet in form SF-II in minor punishment as stoppage of one increment for one year. The opposite party prayed that application for the workman concerned is not legal and justified. As such workman is not entitled to any relief whatsoever.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim. The rejoinder was filed by workman on 17-01-2011 thereafter case was fixed for filing documents and evidence of workman. The evidence and documents were not filed by workman on 28-02-2011, 24-03-2011, 19-05-2011, 13-07-2011, 07-09-2011, 21-10-2011, 14-12-2011, 2-02-2012.

28-03-2012. On 10-05-2012 representative of workman stated that no evidence is to be given hence fix 5-07-2012 for management evidence if any. On 5-07-2012 since the evidence was not filed by opposite party case was fixed for argument and 24-08-2012, 10-10-2012, 5-12-2012 was fixed for argument. But no one appeared for argument on the above dates as such keeping in view the long pendency case was reserved for award.

6. I have gone through the record the case of the workman is that he was charged for disobeying the order of senior authorities hence a charge sheet no.M/C.D.O.D.A.R/LJN/1/22 dated 11-10-2001was issued alleging that applicant has refused to go to Gonda without statement Mr. S. K. Gautam was appointed as enquiry officer but he conducted the enquiryi-arbitrarily manner totally ignoring the rules and principle of natural justice and passed the order of stoppage of increment for one year. The appeal was filed which was not considered by the authorities. It was also stated that during the enquiry. SF5 was converted in minor punishment SF 11 because charge was partly proved and minor punishment order passed which is against the Disciplinary & Appeal Rule 1968 sub rule 10(2).

7. It is well settled that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge that not providing the opportunity of defence in disciplinary enquiry caused failure of justice to him. The workman not filed any oral or documentary evidence nor appeared in the witness box in support of his case. This representation has been denied by the management; therefore, it was for the workman to lead evidence to show that the enquiry was not conducted as per rules.

8. In 2008 (118) FLR 1164 M/s Uptron Powertronics Employees Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad and others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Shanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries vs. Labour Court and Others, 1984 (49) FLR 38 Airtech Private Limited vs. State of U.P. and others and 1996 (74) FLR 2004 (Alld.) Meritech India Ltd. vs State of U.P. and Others; wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would, who would fail if no evidence is led."

9. Moreover it is a case of imposing penalty of stoppage of increment for one year. It is by now well settled that power under 11A of the Act is not as that of appellate power, but is to be exercised only when punishment imposed is shockingly disproportionate to the charges proved against the workman in domestic enquiry.

10. In Mahindra and Mahindra Limited Vs. N.B. Narawade, 2005 (104) FLR 1218 (SC) Supreme Court has held:

> " It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under section ll-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under section ll-A of the Act and reduce the punishment ....."

Accordingly, the reference is adjudicated against the workman Sri Sheshnath Ken, Crane Driver-III and workman is not entitled to the relief claimed.

11. Award as above.

LUCKNOW 28-12-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 02/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/18/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 02/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of North Eastern Railway and their workmen, which was received by the Central Government on 15-1-2013.

[No. L-41012/18/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM , Presiding Officer

I.D. No 02/2006

Ref. L-41012/18/2005-IR(B-II) dated 15-12-2005

BETWEEN :

Shri Ravindera Kumar,
S/o Sh. Late Chhedi Lal,
R/o Khara (Harnarayan Pur),
PO. Badgaon,
Distt. Gonda.

Through P.K. Tiwari, Authrised Rep.
96/196, Roshan Lal Lane,
Old Ganeshganj,
Lucknow

AND

1. The Assistant Divisional Engineer,
   North Eastern Railway,
   Malani Junction,
   Uttar Pradesh
2. The Rail Track Instructor,
   North Eastern Railway,
   Nanpara
3. The General Manager,
   North Eastern Railway,
   Gorakhpur
4. The Assistant Engineer,
   North Eastern Railway,
   Khiri,
   Uttar Pradesh

AWARD

1. By order No. L-41012/18/2005-IR (B-II) dated: 15-12-2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Ravindera Kumar S/o Sh. Late Chhedi Lal, R/o Khara (Harnarayan Pur), PO. Badgaon, Distt. Gonda and the management of the North Eastern Railway for adjudication.

2 . The reference under adjudication is:

"Whether The Action of The Management of North Eastern Railway, (Nonpara and A.D.E.N., Malani JN and D.R.M., N.E. RL Y., Lucknow And Genl. Manager, N.E.RL Y.,Gorakhpur) In terminating the Services of Sh. Ravindra Kumar S/o Late Chhedi Lal Casual Labour/Khalasi w.e.f. 14-10-1983 was legal and justified? If not, what relief the workman is entitled to?"

3. The case of the workman, in brief, is that he was engaged as casual labour/Khalasi w.e.f. 01-03-80 and worked as such till 31-12-80, thereafter, he was re-engaged w.e.f. 25-09-83 to 13-10-83 on the basis of work done in 1980. The workman has alleged that he worked for more than 300 days during 01-03-80 to 31-12-80 and completed 120 days in four months but his working days were not mentioned in the casual labour card and artificial breaks were reflected. The workman has alleged that the management of the railways has not given temporary status to the workman in spite of the fact that he completed 120 days in four months as provided in Rule 149 of the Indian Railway Establishment Manual/Code and instead his services have been terminated ignoring the fact that many juniors are still working with the opposite party, in violation to the provisions contained in Sections 25 F, 25G & 25H of the I.D. Act. Thus, the workman has prayed that he be reinstated with consequential benefits and be given temporary status.

4. The management of the railways has denied the allegattons of the workman by filing its written statement wherein it has submitted that as per available records the workman had engaged as casual w.e.f. 25-09-83 to 13-10-83 for 18 days only and it has denied that the workman has either worked for 120 days continuously or that any workman junior to him has been engaged after his termination. The management has submitted that since the workman has worked for 18 days only therefore he has absolutely no Legal right or any claim for his re-engagement or grant of temporary status. Moreover, the workman has raised the present dispute after a lapse of 23 years. Hence, the management has prayed that the claim of the workman be rejected without any relief to him. The workman has field rejoinder whereby he has only reiterated his averments already made in the statement of claim and has introduced nothing new.

5. The workman filed its evidence on 22-03-2007 and next date was fixed for cross-examination of the workman's witness. When the management could not turn up for cross-examination of the workman it was presumed that the management does not want to cross-examine the workman and next date was fixed for management's witness. The management again did not turned up for its evidence and case was ordered to proceed ex-parte against the management and next date was fixed for argument. Thereafter, the parties did not turn up for long; however, the parties' authorized representatives were lastly present on 05-01-2011 and thereafter, both the parties refrained to appear before this Tribunal. Accordingly, the case was

reserved keeping in view the reluctance of the parties to contest the case; and long pendency of the case since 2006.

6. The workman has filed photocopy of the certain documents, less any record showing his appointment or working days with the opposite party. He has not filed any casual labour card either in original or photocopy thereof. In rebuttal the management has filed copy of record of service of casual labour and copy of letter dated 18-12-2004 of the Section Engineer, Nanpara, paper No. 22/11 & 22/12, showing that the workman has worked for 18 days with it.

7. It was the case of the workman that he worked with the management of the railways as casual labour since 01-03-80 to 31-12-80 and thereafter, w.e.f. 25-09-83 to 13-10-83; but has failed to prove its submissions through cogent evidence. It is settled position of law that a party invoking the jurisdiction of the court must enter the witness box to prove its case. In (2002) 3 SCC 25 Range Forest Officer vs S. T. Hadimani Hon'ble Apex Court has observed as under:

> "It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

12. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti and Asstt. Executive Engineer as follows :

> "It is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant workman will no suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant (workman) will not be the ground for the tribunal to draw an adverse inference against the management."

13. In the present case the workman has stated that he has worked continuously since 01-03-80 to 31-12-80 and thereafter, w.e.f. 25-09-83 to 13-10-83; but has failed to prove the same through some documentary evidence either original or photocopy. The workman did not make any effort to get them summoned from the management also. The workman has pleaded that his services have been terminated in violation to the provisions contained in Section 25 F and G; but for compliance of provisions of Section 25 F of the Act it is necessary that workman should have worked for at least 240 days in the year preceding the date of alleged termination. But the workman has again failed to prove that he worked continuously for 240 days in twelve calendar months preceding the date of alleged termination. Likewise he failed to establish that any of the juniors to him are still working with the railways. Mere pleadings are not substantial proof as the same has to be corroborated by proper evidence. Here in this case the workman has filed only a self serving statement. He even failed to disclose the names of the workmen who were junior to him and are still in the employment of the opposite party. Thus, the allegation of the workman that the juniors were retained and he was terminated in violation to the provisions contained in Section 25 G does not seem to be reliable.

14. The initial burden of establishing the fact of continuous working for 240 days in a year preceding the date of alleged termination was on the workman but he has failed to discharge the above burden. Mere pleadings are no substitute for proof. There is no reliable material for recording findings that the workman had actually worked for 240 days in the preceding twelve months from the date of his alleged temination and the alleged unjust or illegal order of termination was passed by the management. Moreover, the workman has raised the present dispute after a considerable delay of 23 long years without any substantial explanation for such ordinate delay.

Accordingly, the reference is adjudicated against the workman Ravindera Kumar; and I come to the conclusion that he is not entitled to any relief.

15. Award as above.

Lucknow : 16-10-2012.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 17 जनवरी, 2013

का.आ. 357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रॉयल एयरवेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 193/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था ।

[सं. एल-11012/59/2002-आई आर (सीएम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 193/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of M/s. Royal Airways and their workman, which was received by the Central Government on 16-1-2013.

[No. L-11012/59/2002-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No.193/2011

Shri Prem Parkash
S/o Shri Mahanand,
C/o Shri Devi Dutt, Type 11/35
Rashtrapati Bhawan,
New Delhi .... Claimant

Versus

The Vice President,
M/s Royal Airways,
Cargo Complex,
I.G.Airport, Terminal No.1,
Palam, New Delhi .... Management

AWARD

Modi Luft Limited (in short the Company) used to run air transport services in 1995. Shri Prem Prakash was serving as a Guard in the said company. Operations of the Company came to an end in 1997. Apprehending that the Company was going to stop its operations, claimant abandoned his job. When the Company decided to re-launch its operations in the name of Royal Airlines (in short the Airlines), a policy decision was taken to take an offer of employment to former employees of the Company. In pursuance of the said policy decision, a letter was written to the claimant on 14-10-1998, calling upon him to submit his bio-data alongwith letter signifying his willingness to be considered for the job. Claimant submitted his willingness but was not employed by the Airlines. Aggrieved by that act, he raised a demand for reinstatement in services of the Airlines. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. Since the Airlines contested his claim, conciliation proceedings ended into failure. On consideration of conciliation report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal, for adjudication, vide order No.L-11012/59/2002-IR(CM-I), New Delhi, dated 13-06-2003 with following terms:

"Whether the action of the management of M/s. Royal Airways Limited (formerly known as Modi Luft Limited) in terminating the services of Shri Prem Prakash, Security Guard with effect from 06-05-1997 is just, fair and legal? If not, to what relief is the workman entitled and from which date?"

2. Claim statement was filed by the claimant pleading therein that he joined services with the Company on 04-12-1995. He was drawing his salary at the rate of Rs.2770.00 per month. He served the Company sincerely upto 05-05-1997, when he was told not to report for duties with effect form 06-05-1997. He was called to resume his duties after a fortnight. But when he visited premises of the Company, he was told to visit again after six months. In November 97, he again approached the Company to resume his duties but he was not allowed, to do so. Thus, his services were dispensed with by the Company in an illegal manner without one months notice or pay in lieu thereof. Statutory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) were not followed. Claimant pleads that he received letter dated 14-10-1998, detailing therein that Company is likely to re-launch its operations in the name of Royal Airlines, wherein it was detailed that a policy decision was taken to make an offer of employment to former employees of the Company, subject to their sending bio- data and a letter signifying willingness to be considered for the job. He was also required to get a clearance from the concerned quarters to the effect that no statutory claim was pending against him. Certificate was also sought from him to the effect that he worked with the Company from 04-10-1991 to 05-08-1997 and voluntarily abandoned his job and had no claim whatsoever on the Company. It was also required of him to submit that neither he filed any complaint or suit against the Company nor he had authorised anyone to do so. Claimant presents that the employees who have submitted their bio data and willingness were appointed by the Airlines. However, no appointment letter was issued in his

favour. He presents that termination of his services was illegal, hence he is entitled to relief of reinstatement in service with continuity and full back wages.

3. Claim was demurred by the Airlines pleading that the claimant abandoned his services in 1997. His services were never terminated by the Company. In 1996, he was drawing a salary of Rs. 2770.00 per month. It has been denied that he served the Company sincerely and diligently upto 05-05-1997. The Company dispels allegations to this effect that he was told not to come to resume his duties on 06-05-97. No such assurance was given that he should come after a fortnight or after a period of six months, as alleged. Since he had abandoned his services, there was no occasion for the Company to comply with provisions of Section 25-F of the Act.

4. The Airlines pleads that it was to restart its operations and as a good gesture, letters were sent to all earlier employees, offering them an opportunity to be part of re-launch operations. The Airlines could not restart its operations at that time. The claimant was to send his bio data, certificate, letter signifying his willingness to be considered for the job. Application was to be considered on merits and appointment was to be made afresh. The Airlines pleads that when claim statement is read in between the lines it emerges that the claimant had given a certificate to this effect that he had voluntarily given up his job and has no claim against the Airlines. When he has given such a certificate in writing, it does not lie in his mouth to approbate and reprobate facts. No case is there in his favour for reinstatement in service of the Airlines. Claim being devoid of merits may be dismissed, pleads the Airlines.

5. On pleadings of the parties, following issues were settled by my learned predecessor :

1. Whether dispute is not maintainable as workman has abandoned his services in 1997?
2. Whether dispute is barred by laches/time?
3. As per terms of reference.
4. Relief.

6. Vide order No.Z-22019/6/2007-IR(C-II), New Delhi dated 11-02-2008, case was transferred to Central Government Industrial Tribunal No.2, New Delhi, for adjudication, by the appropriate Government. It was retransferred to this Tribunal, for adjudication by the appropriate Government, vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30-03-2011.

7. Claimant has examined himself in support of his claim. Shri Sanjay Sharma entered the witness box to testify facts on behalf of the Airlines. No other witness was examined by either of the parties.

8. Arguments were heard at the bar. Shri Somnath, authorised representative, advances arguments on behalf of the claimant. Shri Sarojanand, authorized representative, presented facts on behalf of the Airlines. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. 2

9. At the outset, it was agitated by and on behalf of the Airlines that the claim put forward by the claimant is barred by time. Therefore, it is expedient to ascertain as to whether claim can be discarded, since it was beyond limitation. For an answer, legal provisions are to be noted. The Tribunal has to take into account the provisions of the Act. Section 10(1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of Section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

10. Claimant served the company upto the end of May 1997 and raised demand for reinstatement in service on 04.10.2000. Therefore, out of these facts, it is apparent that after about 3 ½ years, claimant came out of slumber and made a demand for reinstatement in service. At the cost of repetition, it is said that no period of limitation is provided in the Act to raise a dispute before the Conciliation

Officer. Appropriate Government is supposed to consider the case on its merits and then to refer the same adjudication. Undoubtedly, period of 3½ years was spent by the claimant in hibernation but that period would not prevent him from seeking redressal of his grievance. Therefore, I am of the considered view that such a long period not passed, which may denude the claimant of his right of redressal before the Tribunal. Consequetntly, it is announced that the claim is not barred on account of delay and latches. Issue is, therefore, answered in favour of the claimant and against the Airlines.

Issue Nos. 1 and 3

11. As unfolded by the claimant in his affidavit Ex.WW1/A, he joined services of the Company on 04-10-1995. He served the Company upto 05-05-97. On this count, Shri Sanjay Sharma could not present different and distinct facts. Therefore, it has emerged that the claimant served the company from October 1995 to 05-05-1997.

12. Claimant projects that his services were dispensed with by the Company on 06-05-97. Contra to it, Shri Sharma unfolds that the claimant had abandoned his services, when he came to know that the company was going to close its operations. It is not a matter of dispute that in 1997, the Company, had closed its air transport service. Letter Ex.WW1/5 has been relied by the claimant. Contents of this document would throw light on the controversy. Therefore, those contents are extracted thus:

"You would be aware that Modi Luft Limited is likely to re-launch operations very soon under the name of Royal Airways.

A policy decision has been taken to make a first offer of employment to the former employees of Modi Luft Limited. For this purpose, your detailed Bio- Data along with a letter signifying your willingness to be considered for this Job is required. We also require a clearance certificate; as enclosed; wherein you are required to certify that you have no claim, against the company in respect of any statutory and other dues relating to Provident Fund, ESI, TDS etc."

13. The Airlines called upon the claimant to submit his bio-data along with a letter signifying his willingness to be considered for the job with the former. It has further been pointed out that the Airlines was to re-launch its operations. Consequently, it is emerging over the record that the Airlines called upon the claimant to show his willingness to serve it and to submit his bio-data and application in that regard. Had there been a case of termination of service of the claimant, owing to dislikes of the Company, there was no occasion for the Airlines to make an offer of re-employment to the claimant. Such an offer makes it clear that the Airlines wanted to comply with provisions of Section 25 H of the Act and made an offer to the claimant to submit his bio-data and willingness to serve the Airlines. These facts emerge out of the pleadings made by the claimant. Facts pleaded by him in that regard are extracted thus:

> "In the enclosed certificate, the certificate has been sought from the workman to the effect that he worked in Modi Luft from 04-10-1995 to 05-08-1997 and further that I hereby declcare that having voluntarily given up my job, I have no claim whatsoever on Modi Luft and further declare that I have neither filed any complaint o: suit against Modi Luft nor have authorized anyone to do so on my behalf. My resume is enclosed."

14. When facts detailed above are read in between the lines, it emerged over the record that the claimant tendered certificate to this effect that he voluntarily gave up his job and had no claim whatsoever on the Company, He also declared therein that he had not filed any complaint or suit against the Company nor he had authorised anyone to do so on his behalf. When the claimant gives such an undertaking, he cannot reprobate facts subsequently. It does not lie in his mouth to say that his services were retrenched by the Company on 06-05-97, in violation of provisions of the Act.

15. Whether there was an occasion for the Company to terminate his services with effect from 06-05-97? For an answer, it would be expedient to know what:

words 'abandon' and 'abandonment' mean? Ordinarily, the word 'abandon' does not mean 'merely leave' but leaving completely and finally. Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment orextinguisthment of a right, giving up of something absolutely, giving up with intent of never claiming a right or inerest, to renounce or for sake utterly. In order to constitute on "abandonment" there must be a total or complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

16. Abandonment is a voluntary positive act. A man must expressly say that he gives up his right. If he remains quiet, it cannot be said that he is for saking his title to property or his interest therein. An offices is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandonment of an office. A mere absence of a workman from duty cannot be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention cannot be attributed to an employee without adequate evdeince is that behalf. However, the "intention" may be inferred from the acts an

conduct of the party. The question as to whether the job, in fact, has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case. Certificate given by the claimant and facts pleaded by him in that regard make it crystal clear that the claimant had abandoned his job, when he found that the Company was going to close its operations.

17. When an employee abandons his services, his employer is left with no option but to act in accordance with the wishes of the employee. In such a situation, no active action is said to be initiated ,by the employer in terminating services of the employee. Therefore, such an act cannot be called retrenchment. When the claimant abandoned his job, there was no occasion for the Company to terminate his job. Provisions of Section 2(oo) does not come into play in a situation when such an employee abandons his job. Provisions of Sections 25-G and 25-H of the Act would have no application to such a situation. Action of the employer cannot be questioned in that regard relating to justifiability, fairness and

18. To seek re-employment under provisions of Section 25-H of the Act, claimant should satisfy following conditions :

(i) He should be a citizen of India.

(ii) He should have peen retrenched prior to re employment.

(iii) He should have been retrenched from same category of service of the industrial establishment in which re-employment is *proposed*.

(iv) He should have offered himself for re-employment in response to the notice by the employer under rule 76 of the Industrial Disputes (Central) Rules, 1957.

19. In plain language, Section 25-H of the Act, peaks of re-employment of retrenched workman. As pointed out above, claimant had abandoned his services and the Company had not retrenched him at all. Therefore it is postulated that provisions of Section 25-H of the Act are not satisfied here in the present case. I conclude that though the Airlines called for bio-data, certificate and letter signifying his willingness for the job, yet, it was not bound to offer job to the claimant under the provisions of Section 25-H of the Act. Therefore, act of the Airlines in not offering job to the claimant does not offend the provisions of Section 25-H of the Act. Claimant is not entitled to any relief.

20. In view of the reasons detailed above, it is concluded that it was the claimant who had abandoned his job and is not e ntitled to relief of reinstatement, pursuant of letter Ex WW1/5. No relief is available to the claimant. Issues are, therefore, answered in favour of the airlines and against the claimant.

Relief

21. Since the claimant abandoned his job and the Company had not retrenched his services, his case does not fall within the ambit of provisions of Section 25-H of the Act. Claimant cannot force the Airlines to offer him job pursuant to application submitted by him. Consequently it is concluded that no relief is available to the claimant. His claim is, accordingly, discarded. An award is passed, in favour of the Airlines and against the claimant.

Dated: 7-12-2012 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 17 जनवरी, 2013

का.आ. 358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कम्बाटा एविएशन प्रा. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 79/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था ।

[सं. एल-11012/5/2012-आई आर (सीएम-II)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 79/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of M/s. Cambata Aviation Pvt. Ltd. and their workman, which was received by the Central Government on 16-01-2013.

[No. L-11012/5/2012-IR (CM-II)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 26th December, 2012

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 79/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947), between the Management of Cambata Aviation and their Workman)

BETWEEN

Sri K. Sridhar 1st Party/Petitioner

Vs.

The Airport Manager
M/s Cambata Aviation P. Ltd.
12-A/14, 2nd Floor Departure,
Anna International Airport,
Chennai International Airport
Chennai-600027 — 2nd Party/Respondent

Appearances :

For the 1st Party/Petitioner Default to Appear

For the 2nd Party/Management M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-11012/5/2012-IR(CM-I) dated 10.10.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

'Whether the action of the management of Cambata Aviation P. Ltd, in denying the Statutory Airport Entry Pass to Sri Sridhar K. to gain entry inside the Airport thereby causing a forced termination from service is legal and justified? To what relief is the workman concerned entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as I D79/2012 and issued notices to both sides. Respondent appeared through advocate and Petitioner did not appear in the dispute in spite of having been served with notice twice, filing statement of claim complete with relevant documents, list of reliance and witnesses with copies thereof to the Respondent. When the matter stood posted from time to time for further steps and lately on 24.12.2012 for further proceeding also, petitioner was absent nor represented.

3. In spite of service of notice for appearance the petitioner in the dispute did not turn up or let in any evidence in support of his case for answering the reference. Needless to say it is upon the petitioner to substantiate his case that the denial of statutory airport entry pass to him to gain entry inside the Airport, thereby causing forced termination from service is not legal and justified, if it is actually so. When he wishes the Court to be satisfied and made believe that it is so it is for him to discharge that burden which has not been done. The inevitable conclusion is that there has not been the denial of statutory airport entry pass to him to gain entry inside the Airport, thereby causing forced termination from service, as alleged, to hold that the same, if done is not legal and justified.

4. The reference is answered accordingly.

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1 st Party/Petitioner None

For the 2nd Party/ Management None

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 17 जनवरी, 2013

का.आ. 359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 125/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था।

[सं. एल-20012/22/2001-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 125/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 16-1-2013.

[No. L-20012/22/2001-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NO.1, DHANBAD.

In the matter of reference U/s 10 (1) (d) (2A) of I.D.Act.

Ref. No.125 of 2001.

Employers in relation to the management of Angarpathra Colliery of M/s B C C L.

AND

Their workman.

Present: Sri RANJAN KUMAR SARAN, Presiding Officer.

Appearances :

For the Employers : Sri D.K. Verma, Advocate.

For the workman : None.

State : Jharkhand.

Industry : Coal.

Dated 20-12-012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub- Section (2A) of Section10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Angarpathra Colliery of M/s BCCL in dismissing Sri Bajrangi Bhuia from the services of the company w.e.f. 9.5.97 is justified? If not, to what relief is the concerned workman entitled?"

Though parties filed their claim statement, the workman who was to file documents in support of his claim neither appeared nor took any steps continuously.The management is present. It is seen neither the union nor the workman has any interest in the case, which is lingering since 12 years. Therefore it is felt there is no dispute between parties. Hence no dispute award is passed. Communicate it to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 30 जनवरी, 2013

का.आ. 360.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 मार्च, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 (धारा-76 की उप-धारा-(1) और धारा-77,78,79, और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध छत्तीसगढ़ राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

"जिला रायपुर की उप-तहसील नवापारा में स्थित राजस्व ग्राम-नवागॉव, परसदा, उमरकोटी, पीपरोद, चिपरीडीह, पटैवा, दोमीतराई, दुलना, जौंधा, जोंधी, पारागॉव, घोट, सोट, छाता, आलेखुता, कुर्रा, तर्री, कोलियारी, लखना, दादर भउरी, मानेकचउरी, नवापारा तथा उप-तहसील नवापारा, जिला रायपुर की सीमाओं के अन्तर्गत आने वाले सभी क्षेत्र ।"

"जिला गारियाबंद की तहसील राजिम में स्थित राजस्व ग्राम-पितईबंद, बकली, कुम्ही, किरोई, धमनी, सेमरतरा, कोमा, लफंडी, बेलतुकरी, धुमा, श्याम नगर,बरौदा, सिंघैरी, चौबे बॉधा, बासिन, राजिम तथा तहसील राजिम जिला गारियाबंद की सीमाओं के अन्तर्गत आने वाले सभी क्षेत्र ।"

[सं. एस-38013/10/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 30th January, 2013

S.O. 360.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st March, 2013, as the date on which the provision of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Chhattisgarh namely: –

"Revenue villages of Navagaon, Parsada, Umarkoti, Pipraud, Chipridih, Pataiva, Domitarai, Dulna, Jaunda, Jaundi, Paragaon, Ghot, Sot, Chhatta, Aalekhuta, Kurra, Tarri, Koliari, Lakhna, Dadar Bhauri, Manekchauri, Navapara and the areas falling within The Sub Tehsil Navapara, District Raipur".

"Revenue villages of Pitaiband, Bakli, Kumhi, Kiroi, *Dhamni, Semartara, Koma, Lafandi,* Beltukri, *Dhutna,* Shyam Nagar, Baraunda, Singhauri, Choubey Bandha, Baasin, Rajim, and the areas falling within the all in Tehsil Rajim, District Gariabandh."

[No. S-38013/10/2013-S.S.I]

NARESH JAISWAL, Under Secy.

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